

# HOLOCAUST INSURANCE ACCOUNTABILITY ACT OF 2010

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## HEARING BEFORE THE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

ON

**H.R. 4596**

SEPTEMBER 22, 2010

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## HOLOCAUST INSURANCE ACCOUNTABILITY ACT OF 2010

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WEDNESDAY, SEPTEMBER 22, 2010

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCIAL  
AND ADMINISTRATIVE LAW,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 11:39 a.m., in room 2141, Rayburn House Office Building, the Honorable Steve Cohen (Chairman of the Subcommittee) presiding.

Present: Representatives Cohen, Johnson, Chu, Franks, Jordan, and Coble.

Staff present: (Majority) Eric Tamarkin, Counsel; Carol Chodroff, Counsel; Adam Russell, Professional Staff Member; and (Minority) Blaine Merritt, Counsel.

Mr. COHEN. This hearing of the Committee on the Judiciary, Subcommittee and Commercial Administrative Law will now come to order. Without objection, the Chair will be authorized to declare a recess of the hearing, and I will recognize myself first for a short statement.

First of all, to those who it is relevant to, Happy New Year. The issue we are examining today is a particularly sensitive issue to the people here and many people throughout the world—compensation for survivors of the Holocaust and their heirs—the victims of the Holocaust.

The Holocaust, the unspeakable horror that took place World War II in the Nazi regime, should never be, and hopefully will never be forgotten or denied by people anywhere. Nothing could ever undo the devastation, the loss of life, the total disregard for basic rights, property values and property rights so secondary to the rest—still, that was part of it—and it shattered the lives of millions of human beings and families and destroyed them. And it happened 70 years, give or take, ago.

We can never undo the horror that took place. We can never really make—there is no way to make things right. But we have to ensure that Holocaust survivors receive what is rightfully theirs and find the proper process to do it.

Before and during World War II, millions of Jewish people in Europe bought insurance policies to protect their family assets, save for their childrens' education, plan for retirement. All forms of property, including insurance policies and insurance benefits, were confiscated from Jewish people by the Nazi regime.

Following the war, Holocaust survivors and their families filed claims with insurance companies. Countless Holocaust survivor claims were rejected due to the absence of death certificates and policy documents. Many insurance companies informed claimants that their policies had already been paid.

Frequently, insurance company records and records in government archives are the only proof of the existence of insurance policy belonging to Holocaust victims, as the Nazis destroyed property and took people from their homes without the opportunities to keep, take, preserve records.

After World War II, the West German government enacted restitution laws which excluded many claimants and prohibited certain types of claims. In 1989, after the Berlin Wall came down, Germany was reunified. The reunified Germany allowed claimants to gain access to records and file claims.

German courts treated the 1990 treaty as a lifting of the prohibition on certain Holocaust-era claims, and Holocaust survivors began to file Holocaust insurance claims in our country. Claimants also filed class-action lawsuits in the United States courts against the Swiss, the German, Austrian, Italian and French companies who conducted business in Germany during the Nazi regime seeking compensation for Holocaust-era assets, unpaid insurance policies, and dormant bank accounts.

Many of these were cases of first impression. To address the novel issues presented, the Federal Government sought to facilitate a global settlement through a series of agreements involving national and state governments, class-action lawyers, private industry and a variety of Jewish and other victims groups.

These negotiations led to the creation of the International Commission on Holocaust-Era Insurance Claims, ICHEIC, in 1998 and identified Holocaust-era insurance policies, hoped to reach out to potential claimants and evaluate claims out of court based on relaxed standards of proof. ICHEIC received funding of about \$550 million from participating European insurers.

From 2000 to 2007, \$300 million was paid under ICHEIC's claims process to 47,353 people out of 90,000 claimants. In addition to the funds paid to individual claimants, ICHEIC also allocated \$190 million to assist Holocaust survivors and promote Holocaust education and remembrance.

Critics of the ICHEIC process maintain that companies holding Holocaust-era insurance policies continue to withhold the names of the owners and beneficiaries of thousands of insurance policies. They are frustrated that only a fraction of the money—amount of the insurance companies' monies that were owed have been paid to victims.

As a result of this H.R. 4596, the "Holocaust Insurance Accountability Act of 2010" was introduced. It, (1), permits enforcement of state laws, creating a cause of action for covered Holocaust-era insurance policy claims; (2), it clarifies the validity of a state law requiring insurers doing business in state to disclose information about Holocaust-era policies; and (3) restricts the use of funds by the Department of State, or any other agency, for the purpose of issuing a statement in a U.S. court seeking to dismiss Holocaust-era insurance policy claims.

I hope today's hearing will provide a forum for all of these views on each side to be heard. We have a balanced panel. We are not here to advance any particular position. We are here to bring attention to an important issue, and I am confident that our witnesses will help us sort out the many questions it raises.

Legislation raises emotional issues, difficult, highly sensitive issues. I appreciate how painful these issues can be, especially for the victims and the families who were impacted most directly by the Holocaust. I also wish to extend my thanks to several Holocaust survivors who wanted to be here this morning but, for health or other reasons, were unable to join us.

As we begin this hearing, and keeping the sensitivity of these issues in mind, I am reminded of the message of Elie Wiesel, famous Holocaust survivor, one of my heroes whose picture is on my wall in my office, great writer, professor, political activist, Nobel Laureate, human being, man of the world, a man who was exposed as—the depraved aspects of human nature as a Holocaust incarcerated, pictures in many Holocaust museums I think here and in Jerusalem, as well, Yad Vashem.

But he still manages to show kindness and respect for everyone around him. He is a benevolent man, I guess the living Martin Luther King, consistently delivered a powerful message since the end of World War II, a message of peace, atonement, appropriate this time of year, and human dignity for all humanity.

I thank the witnesses for appearing today. I look forward to their testimony. I share the frustration of everybody here in not having a totally good result, but we are trying to find something that brings justice and equity to the situation to the best that we can.

[The bill, H.R. 4596, follows.]

111TH CONGRESS  
2D SESSION

# H. R. 4596

To allow for enforcement of State disclosure laws and access to courts for covered Holocaust-era insurance policy claims.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2010

Ms. ROS-LEHTINEN (for herself, Mr. KLEIN of Florida, Mr. PENCE, Mr. GARAMENDI, Mr. WILSON of South Carolina, Mr. SCHIFF, Mr. LINCOLN DIAZ-BALART of Florida, Mr. ROHRBACHER, Mr. MEEK of Florida, Mrs. BLACKBURN, and Mr. KIRK) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To allow for enforcement of State disclosure laws and access to courts for covered Holocaust-era insurance policy claims.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Holocaust Insurance  
5 Accountability Act of 2010”.

### 6 SEC. 2. FINDINGS.

7 Congress finds the following:



1           (1) The Holocaust, an event in which millions  
2       of people endured enormous suffering through tor-  
3       ture and other violence, including the murder of  
4       6,000,000 Jews and millions of others, the destruc-  
5       tion of families and communities, and the theft of  
6       their assets, was one of the most heinous crimes in  
7       human history.

8           (2) Before and during World War II, millions  
9       of people purchased insurance policies to safeguard  
10      family assets, plan for retirement, provide for a  
11      dowry, or save for their children's education.

12          (3) When Holocaust survivors or heirs of Holo-  
13      caust victims presented claims to insurance compa-  
14      nies after World War II, many were rejected because  
15      they did not have death certificates or physical pos-  
16      session of policy documents that had been con-  
17      fiscated by the Nazis or lost in the devastation of  
18      the Holocaust.

19          (4) In many instances, insurance company  
20      records and records in government archives are the  
21      only proof of the existence of insurance policies be-  
22      longing to Holocaust victims.

23          (5) Holocaust survivors and heirs have been at-  
24      tempting for decades to persuade insurance compa-  
25      nies to settle unpaid insurance claims.

1           (6) In 1998, the International Commission on  
2       Holocaust Era Insurance Claims (in this section re-  
3       ferred to as “ICHEIC”) was established by the Na-  
4       tional Association of Insurance Commissioners in co-  
5       operation with several European insurance compa-  
6       nies, European regulators, the Government of Israel,  
7       and non-governmental organizations with the prom-  
8       ise that it would expeditiously address the issue of  
9       unpaid insurance policies issued to Holocaust vic-  
10      tims.

11          (7) On July 17, 2000, the United States and  
12      Germany signed an executive agreement in support  
13      of the German Foundation “Remembrance, Respon-  
14      sibility, and the Future”, which designated ICHEIC  
15      to resolve all Holocaust-era insurance policies issued  
16      by German companies and their subsidiaries.

17          (8) On January 17, 2001, the United States  
18      and Austria signed an executive agreement, which  
19      designated ICHEIC to resolve all Holocaust-era in-  
20      surance policies issued by Austrian companies and  
21      their subsidiaries.

22          (9) The ICHEIC process ended in 2007 and  
23      companies holding Holocaust-era insurance policies  
24      continue to withhold names of owners and bene-

1       ficiaries of thousands of insurance policies sold to  
2       Jewish customers prior to World War II.

3           (10) Experts estimate that only a small fraction  
4       of the policies estimated to have been sold to Jews  
5       living in Europe at the beginning of World War II  
6       have been paid through ICHEIC.

7           (11) In *American Insurance Association, Inc.,*  
8       *v. Garamendi*, the United States Supreme Court  
9       held that under the supremacy clause of the Con-  
10      stitution of the United States, executive agreements  
11      and Federal Government policy calling for insurance  
12      claims against German and Austrian companies to  
13      be handled within ICHEIC preempted State laws  
14      authorizing State insurance commissioners to sub-  
15      poena company records and require publication of  
16      the names of Holocaust era policy holders.

17          (12) In the *Garamendi* case, the Supreme  
18      Court stated that Congress, which has the power to  
19      regulate international commerce and prescribe Fed-  
20      eral court jurisdiction, had not addressed disclosure  
21      and restitution of insurance policies of Holocaust  
22      victims.

23          (13) Subsequent court decisions have dismissed  
24      survivors' suits against an Italian insurance com-

pany, even though there is no executive agreement between the United States and Italy.

(14) Congress supports the rights of Holocaust survivors and the heirs and beneficiaries of Holocaust victims to obtain information from insurers and to bring legal actions in courts, wherever jurisdiction requirements are met, to recover unpaid funds from entities that participated in the theft of family insurance assets or the affiliates of such entities.

(15) Congress intends for this Act to be interpreted to allow for State causes of action and disclosure requirement laws regarding Holocaust-era insurance policies to be valid and not preempted.

(16) This Act expresses the intent of Congress to deem valid State laws protecting the rights of Holocaust survivors and the heirs and beneficiaries of Holocaust victims to obtain information from insurers and to bring actions in courts of proper jurisdiction to recover unpaid funds from entities that participated in the theft of family insurance assets or the affiliates of such entities.

(17) Insurance payments should be expedited to the victims of the most heinous crime of the 20th century to ensure that justice is served.

1           (18) This Act will enable survivors, heirs, and  
2       beneficiaries to obtain compensation commensurate  
3       with the real monetary value of their losses.

4           (19) Under the circumstances faced by Holo-  
5       caust victims and their families, courts should be  
6       open to Holocaust victims and their families for a  
7       reasonable number of years after the enactment of  
8       this Act, without regard to any other statutes of lim-  
9       itation.

10 **SEC. 3. VALIDITY OF STATE LAWS.**

11       (a) **VALIDITY OF LAWS CREATING CAUSE OF AC-**  
12 **TION.**—Any State law creating a cause of action against  
13 any insurer or related company based on a claim arising  
14 out of or related to a covered policy shall not be invalid  
15 or preempted by reason of any executive agreement be-  
16 tween the United States and any foreign country.

17       (b) **VALIDITY OF LAWS REQUIRING DISCLOSURE OF**  
18 **INFORMATION.**—Any State law that is enacted on or after  
19 March 1, 1998, and that requires an insurer doing busi-  
20 ness in that State, including any related company, to dis-  
21 close information regarding any covered policy shall be  
22 deemed to be in effect on the date of the enactment of  
23 such law and shall not be invalid or preempted by reason  
24 of any executive agreement between the United States and  
25 any foreign country.

1 (c) WAIVER.—The President may waive the applica-  
2 tion of subsection (a) or (b) with respect to any executive  
3 agreement that is entered into between the United States  
4 and a foreign country on or after the date of the enact-  
5 ment of this Act and that involves covered policies if, not  
6 later than 30 legislative days before the signing of the ex-  
7 ecutive agreement—

8 (1) the President determines that the executive  
9 agreement is vital to the national security interests  
10 of the United States; and

11 (2) the President provides to the appropriate  
12 congressional committees a report explaining the  
13 reasons for such determination.

14 (d) STATEMENTS OF INTEREST.—No funds may be  
15 used by the Department of State, or any other department  
16 or agency of the United States, for the purpose of issuing  
17 a statement of interest seeking to encourage a court in  
18 the United States to dismiss any claim brought to recover  
19 compensation arising out of or related to a covered policy.

20 (e) STATUTE OF LIMITATIONS.—No court may dis-  
21 miss a claim that is brought under a State law described  
22 in subsection (a) or (b) within 10 years after the date of  
23 the enactment of this Act on the ground that the claim  
24 is barred under any statute of limitations.

1 **SEC. 4. APPLICABILITY.**

2 This Act shall apply to any claim that is brought,  
3 before, on, or after the date of the enactment of this Act,  
4 under a State law described in subsection (a) or (b), in-  
5 cluding—

6 (1) any claim dismissed, before the date of the  
7 enactment of this Act, on the ground of executive  
8 preemption; and

9 (2) any claim that is deemed released as a re-  
10 sult of the settlement of a class action that was en-  
11 tered into before the date of the enactment of this  
12 Act, if the claimant did not receive any payment  
13 pursuant to the settlement.

14 **SEC. 5. DEFINITIONS.**

15 In this Act:

16 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**  
17 **TEES.**—The term “appropriate congressional com-  
18 mittees” means the Committee on Foreign Affairs in  
19 the House of Representatives, the Committee on  
20 Foreign Relations in the Senate, and the Commit-  
21 tees on the Judiciary of the House of Representa-  
22 tives and the Senate.

23 (2) **COVERED POLICY.**—

24 (A) **IN GENERAL.**—The term “covered pol-  
25 icy” means any life, dowry, education, property,  
26 or other insurance policy that—

1 (i) was in effect at any time after  
2 January 30, 1933, and before December  
3 31, 1945; and

4 (ii) was issued to a policyholder domi-  
5 ciled in any area that was occupied or con-  
6 trolled by Nazi Germany.

7 (B) NAZI GERMANY.—In this paragraph,  
8 the term “Nazi Germany” means—

9 (i) the Nazi government of Germany;  
10 and

11 (ii) any government in any area occu-  
12 pied by the military forces of the Nazi gov-  
13 ernment of Germany.

14 (3) INSURER.—The term “insurer” means any  
15 person engaged in the business of insurance (includ-  
16 ing reinsurance) in interstate or foreign commerce,  
17 if the person issued a covered policy, or a successor  
18 in interest to such person.

19 (4) LEGISLATIVE DAYS.—The term “legislative  
20 days” means those days on which both Houses of  
21 Congress are in session.

22 (5) RELATED COMPANY.—The term “related  
23 company” means an affiliate, as that term is defined



13

10

1 in section 104(g) of the Gramm-Leach-Bliley Act  
2 (15 U.S.C. 6701(g)).

○

Mr. COHEN. I now recognize my colleague, Mr. Franks, the distinguished Ranking Member of the Subcommittee, for his opening remarks.

Mr. FRANKS. Well, thank you so much, Mr. Chairman. I sincerely appreciate you calling today's hearing. It brings to mind probably one of the very darkest eras of human history.

Since immediately preceding and during World War II, the Nazi government indiscriminately confiscated assets of Jews living in Germany and other occupied territories. This included the liquidation of insurance policies as well as the forced payment of insurance proceeds from claims for the cash values directly to the Nazi government.

Following the war, Western European countries tried to provide restitution to dispossessed property owners, including insured persons and their beneficiaries. But the difficulty of assessing records complicated the ability of Holocaust victims and their heirs to file claims without highly specific policy information.

In the 1990's, Jewish organizations, Holocaust survivors and the U.S. and Israeli governments renewed efforts to obtain compensation for survivors who did not participate in previous post-war restitution programs. In addition to the class-action lawsuits brought against Western European insurers, the U.S. government brokered discussions that led to compensation agreements between victims and affected European governments and insurers.

Concurrent with these events, Mr. Chairman, your insurance organizations, Jewish advocacy groups and the state of Israel signed a memorandum of understanding to create the International Commission on Holocaust-Era Insurance Claims, or ICHEIC. ICHEIC was tasked with identifying relevant Holocaust-era insurance policies issued between 1920 and 1945, reaching out to potential claimants and encouraging them to participate in the ICHEIC process.

Mr. Chairman, the ICHEIC claims process featured relaxed standards of proof and an insured-provided database of potential policyholders. The organization commenced operation in 2000 and closed 3 years ago. ICHEIC facilitated the payment of approximately \$300 million to 48,000 claimants. Forty-three thousand claims were denied since they were satisfied under previous compensation agreements or because they failed to satisfy the relaxed standards of proof.

ICHEIC members also contributed an additional \$200 million to a humanitarian fund, the distribution of which is overseen by Jewish advocacy groups. Although ICHEIC claims and appeals processes have concluded, the participating insurers will continue to accept and process remaining claims. This will be done on the same ICHEIC terms at no cost to the claimants and without regard to the statute of limitations.

Now, despite this record of achievement, ICHEIC is not without its critics, of course, some of whom will testify today. They believe that ICHEIC maintained incomplete records of Holocaust-era policyholders and still owe billions to unpaid claims.

H.R. 4596 addresses their concerns by upholding the validity of state laws that allow aggrieved policyholders to pursue their claims through state courts. Defenders of the ICHEIC maintain that organizations delivered good results—that that organization delivered

good results under the difficult circumstances, and the question is asked in the absence of cooperation among the participating insurers, how could claimants expect to receive a greater access to policy information under the relaxed legal standards.

And I don't know the answer to that question, Mr. Chairman. The Holocaust represents the very worst of the human condition, and it is a scar on humanity's soul that I am afraid will never heal. Our government must do all it can that survivors and their heirs are fairly compensated under existing circumstances 65 years after the fact.

But I don't know what the consensus and which avenue of redress will work best. And so, though, that we have, as so many in this room, the greatest respect and compassion for the survivors and their families, and pray and will work for justice. The challenge before us is to find where that justice can best be achieved.

And so, I want to thank all the witnesses for the expertise and insights that they bring to the hearing, and as certainly will try to use their testimony to better educate myself about 4596 and its consequences and how to find justice in this very real situation before us. And I thank all of you for being here.

Thank you, Mr. Chairman.

Mr. COHEN. I thank the gentleman for his statement. Without objection, other Members' opening statements will be included in the record. And I think people probably know that there were originally votes scheduled for Tuesday night. They were moved to this evening, and that is probably the primary reason why more Members of the Committee aren't here, for they are not necessary required to be here to vote until later this afternoon. But because of the importance of this hearing, we wanted to hold it regardless.

And I am pleased Mr. Coble is here, a distinguished Member from North Carolina. His statement will be placed in the record.

The first panel is very familiar with our rules. Your written statement will be placed in the record, and we would ask you limit your oral remarks to 5 minutes. You know the lighting system, the yellow, the green, and the red.

And then you will be subject to questions sometimes, and sometimes not. We vary on Members. Sometimes we let you not have to be bothered with those of us that would ask questions.

Our first witness is Congressman Adam Schiff. He represents California's 29th Congressional District, which encompasses Pasadena Polytechnic School, where I attended. He serves on the House Judiciary Committee, where he is a leader in efforts to combat intellectual property theft and the piracy of copyrighted materials. I attended two high schools, so you don't think that I am cheating and lying about Coral Gables.

He also serves on the House Appropriations Committee and the House Permanent Select Committee on Intelligence. Prior to serving in the House, he completed a 4-year term as state senator in California's 21st State Senate district, and he chaired the Senate Judiciary Committee.

He is the Senate Select Committee on Juvenile Justice and the Joint Committee on the Arts. He led legislative efforts to guarantee up-to-date textbooks in the classroom, overhaul child support, and pass a Patient's Bill of Rights.

Before serving in the legislature, he served with the U.S. attorney's office in Los Angeles for 6 years, most notably prosecuting the first FBI agent ever to be indicted for espionage. I have learned from him in my service on the Judiciary Committee. He is an outstanding Member, somebody who the—his district and the country can be proud of for serving in the United States Congress. Intelligent, dedicated and talented, and doing a fine job in prosecuting an impeachment case in the Senate. Talents are most valuable.

Thank you, Mr. Schiff, and you would begin your testimony, please?

**TESTIMONY OF THE HONORABLE ADAM B. SCHIFF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. SCHIFF. Well, thank you, Mr. Chairman, for those kind words. I barely recognized myself with that introduction.

But Mr. Chairman, Ranking Member Franks, I want to thank you for calling this hearing on the Holocaust Insurance Accountability Act. I am pleased to be joined on the panel by my colleagues, Congresswoman Ros-Lehtinen, a sponsor of the legislation and a tremendous advocate; and Congressman John Garamendi, whose incredible leadership on this issue long predates his time in Congress.

We are brought here today by our shared commitment to justice for victims of the Holocaust. For more than 60 years, many European insurance companies have unfairly denied insurance claims frequently because survivors and their families could not produce documentation, such as death certificates, needed to prove ownership of a policy.

It is an impossible burden to expect survivors and their families to meet. In fact, we know that, frequently, the only surviving records of these policies are held by these very same insurance companies.

There has been a concerted effort by honorable people to help survivors who are suffering in poverty. The International Commission on Holocaust-Era Insurance Claims process, though flawed in many respects, provided some measure of redress, and I appreciate the commitment and good intentions of those who were involved in the ICHEIC during its 7 years of existence. But it is not the final word, and it cannot be the final word while thousands of survivors struggle in poverty without access to financial restitution that rightfully belongs to them.

There are significant questions about the claims process that the ICHEIC used that need to be addressed, as we know this was not a transparent process. The history of Holocaust insurance claims working their way through the courts and through the International Commission is torturous, and I will leave it for other witnesses on the panel to summarize more fully.

But where the history of these cases is complex, the legislation introduced by my colleague, Congresswoman Ros-Lehtinen, is simple. It asks only for Holocaust survivors and their beneficiaries the same that is owed to every American: a fair day in court.

The Holocaust Insurance Accountability Act would state unequivocally that no vague executive foreign policy interest compels

the dismissal of state actions against insurance companies that refuse to honor claims of Holocaust survivors and their families. In doing so, I believe it would undo wrongly decided cases that have been taken at face value—that have taken at face value vague, unaccountable statements about the foreign policy interests of the United States and allowed them to carry the force of law.

Let me quote briefly from a document that was recently obtained through a Freedom of Information request. It was written by an attorney in the solicitor general's office at the DOJ. In it, the attorney writes, "On the merits, I have some reservations about the legal theory on which the district court dismissed the plaintiff's common-law claims. As a general matter, executive branch actions that express Federal policy but lack the force of law do not preempt state law."

I agree. I have joined with a bipartisan group of colleagues to sign an amicus brief asking the Supreme Court to grant cert and address the unsettled separation of powers questions that the executive branch has asserted. I hope the Supreme Court will take the case and conclude that a vague expression of executive policy is not sufficient to pre-empt state law.

Finally, I want to take a moment to address an argument I have heard by groups that oppose this legislation. They say that this hearing and the legislation will raise expectations of survivors and that we will surely disappoint these people and their families that have already suffered so terribly.

While I respect those making the argument on this, I must disagree. Justice and fairness should be the expectation of every American, and the right to use the legal system to address fully and finally the wrongs that have been done to a person is a foundational aspect of our system of government. I have met with Holocaust survivors who are still trying, after all these many years, to get what is rightfully theirs. They are a tough group, as they would have to be, given the horrors they have endured. It is time for them to get their day in court.

Mr. Chairman, I look forward to working with you to advance this legislation this year. I don't think this is an issue that can wait any longer. And I want to thank you again for your hard work on this, and thank you for inviting me to testify.

[The prepared statement of Mr. Schiff follows:]

PREPARED STATEMENT OF THE HONORABLE ADAM B. SCHIFF,  
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

**Testimony**  
**Congressman Adam Schiff**  
**Hearing on HR 4596, the Holocaust Insurance Accountability Act**  
**Subcommittee on Commercial and Administrative Law**

Chairman Cohen, Chairman Conyers, Ranking Member Franks, I want to thank you for calling this hearing on the Holocaust Insurance Accountability Act. I am pleased to be joined on this panel by my colleagues Congresswoman Ros-Lehtinen, the sponsor of the legislation and a great advocate, and Congressman John Garamendi, whose tremendous leadership on this issue long predates his time in Congress.

We're brought here today by our shared commitment to finally achieving some measure of justice for victims of the Holocaust. For more than 60 years, many European insurance companies have unfairly denied insurance claims, frequently because survivors and their families could not produce documentation, such as death certificates, needed to prove ownership of a policy. It's an impossible burden to expect survivors and their families to meet. In fact, we know that frequently the only surviving records of these policies are held by these very same insurance companies.

There has been a concerted effort by honorable people to help survivors who are suffering in poverty. The International Commission on Holocaust Era Insurance Claims process, though flawed in many respects, did a lot of good. I appreciate the commitment and good intentions of those who were involved in the ICHEIC during its seven years of existence. But it is not the final word and it cannot be the final word while thousands of survivors struggle in poverty without access to financial restitution that rightly belongs to them. There are significant questions about the claims process that the ICHEIC used that need to be addressed, as we know that it was not a transparent process.

The history of Holocaust insurance claims working their way through the courts and through the International Commission is tortuous, and I will leave it to other witnesses on the panel to summarize more fully. But where the history of these cases is complex, the legislation introduced by my colleague, Congresswoman Ros-Lehtinen is simple. It asks only for Holocaust survivors and their beneficiaries the same that is owed to every American – a fair day in court.

The Holocaust Insurance Accountability Act would state unequivocally that no vague executive foreign policy interest compels the dismissal of state actions against insurance companies that refuse to honor claims of Holocaust survivors and their families. In doing so, I believe it would undo wrongly decided cases that have taken at face value statements about the foreign policy interests of the United States.

Let me quote briefly from a document that was recently obtained through a Freedom of Information Act request. It was written by an attorney in Solicitor General Office at the Department of Justice. In it, the attorney writes "On the merits, I have some reservations about the legal theory on which the district court dismissed the plaintiffs' common law claims....As a general matter, 'Executive Branch Actions' that 'express federal policy but lack the force of law' do not preempt state law. While Garamendi may reflect an exception to that general rule, that

principle is still subject to some doubt.” I could hardly say it better myself. I have joined with a bipartisan group of colleagues to sign an Amicus brief asking the Supreme Court to grant Certiorari and address the unsettled Separation of Powers questions that the Executive Branch has asserted. I hope that the Supreme Court will take the case and ask hard questions about whether a vague expression of executive policy is sufficient to preempt state law.

Finally, I want to take a moment to address an argument I’ve heard made by groups that oppose this legislation. They say that this hearing will “raise the expectations” of survivors, and that we will surely disappoint these people and their families that have already suffered so terribly. While I respect those making the argument, on this, I must disagree. Justice and fairness are to deserved expectation of every American, and the right to use the legal system to address, fully and finally, the wrongs that have been done to them is a foundational aspect of our system of government.

I have met with many Holocaust survivors, many of whom are still trying, after all these many years, to get what is rightfully theirs. They are a tough group, as they would have to be, given the horrors they endured. It is time for them to get their day in court.

Mr. Chairman, I look forward to working with you to advance this legislation this year. I do not think this is an issue that can wait any longer. Thank you again for your hard work on this issue, and thank you for inviting me to testify.

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Mr. COHEN. Thank you, Mr. Schiff.

Our second witness is Congresswoman Ros-Lehtinen. Congressman Ros-Lehtinen was selected in 1989 to represent Florida’s 18th Congressional District. Ranking Member of the House Committee on Foreign Affairs, and personally, I hope she stays that way.

Prior to her election, Ms. Lehtinen was elected to the Florida State House of Representatives in 1982 and the Florida State Senate in 1986.

Ms. ROS-LEHTINEN. I think your introduction was sweeter.

Mr. COHEN. She also founded and served as the principal and teacher of a private bilingual elementary school in Hialeah, Florida. Ms. Ros-Lehtinen is the author of H.R. 4596, the "Holocaust Insurance Accountability Act of 2010."

She does represent a district that is close to my heart, as I did go to two high schools, and one of which Coral Gables abuts your district, and I attended Hialeah Race Track on many occasions and enjoyed the flamingos when they existed. I thank you. And if that unfortunate circumstance should occur, which is very unlikely that there should be a switch, I know you will be a great Chairwoman.

Thank you, Congressman Ros-Lehtinen, for coming today and giving your testimony.

**TESTIMONY OF THE HONORABLE ILENA ROS-LEHTINEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Ms. ROS-LEHTINEN. Thank you so much, Chairman Cohen. Thank you to Ranking Member Franks and distinguished Members for the opportunity to testify on an issue that is of great importance to me but, more importantly, of great importance to my district and my constituents, and that is the legal rights of Holocaust survivors and the responsibility of insurance companies as it relates to Holocaust-era policies.

I have the honor and the privilege of representing a district in South Florida which is home to one of the largest communities of Holocaust survivors in the Nation. I have worked with several of our colleagues to protect the interests and the rights of survivors against the government, against banks, and against others who have benefited—benefited—from the atrocities committed during the Holocaust, and I have worked on issues related to Holocaust-era compensation for years.

And one of the Holocaust-related issues that remains unresolved and one that many of my constituents regularly reach out to me on asking for congressional action on this, is the matter of unpaid Holocaust-era insurance policies. Although many decades have passed since the world witnessed the terrible crimes perpetrated by the Nazi regime, many European companies continue to refuse to disclose Holocaust-era insurance policy information or pay Holocaust survivors, or families of victims, for policies purchased before or during World War II.

These companies have unfairly denied claims, alleging that Holocaust survivors and heirs of the victims lack proper documentation, as Congressman Schiff has pointed out, such as death certificates, to prove insurance policy ownerships. Denial of claims based on this argument is shameful and outrageous, since concentration and death camps in which many of these Holocaust victims perished did not issue death certificates.

Many of the documents the victims had to substantiate their claims were confiscated by the Nazis or left behind by the victims while fleeing. In many cases, the only records of policy ownership,



as Congressman Schiff pointed out, are in the vaults of the insurance companies, many of which continue to refuse to disclose these documents. Essentially, what these insurance companies are saying is that they will only settle these claims if the survivors provide policy documentation, which only the insurance companies have and are refusing to disclose.

In 1998, the International Commission on Holocaust Era Insurance Claims, or ICHEIC, was established with the objective of settling Holocaust-era insurance claims. However, the voluntary ICHEIC process was controlled by the European insurance companies and lacked the necessary oversight and enforcement mechanisms.

The insurance companies were never forced to adequately disclose policy information. If the policy information was not disclosed, then how were the survivors supposed to prove policy ownership? ICHEIC was to apply a relaxed standard of proof when processing Holocaust-era claims, taking into account the special circumstances associated with the Holocaust.

However, evidence indicates that ICHEIC often failed to apply this relaxed standard of proof and, in some cases, placed heavier burden of proof on the survivors that would have been required in a court of law. The ICHEIC process ended in 2007 after producing payments for only a small fraction of the value of Holocaust-era insurance policies, a flawed process which no longer exists should not be deemed as the exclusive remedy for survivors to recover under their policies as proposed by those who oppose this Holocaust insurance legislation that I have introduced with my colleague from Florida, Congressman Klein.

Some of the insurance companies have stated that they will continue to process claims under ICHEIC rules, but these are empty promises that will lead to little, if any, results. History has shown us that, despite wishful thinking, insurance companies will not do the right thing, and they will not voluntarily disclose information and pay out insurance claims to Holocaust survivors.

Holocaust survivors, just like everyone else, should have the right to have their day in court to recover under their policies. Allowing insurance companies to continue to withhold information and withhold payment, as they did under ICHEIC, without allowing claimants to have access to U.S. courts, is unacceptable.

Companies that have shamefully failed to disclose Holocaust-era policy information or adequately settle claims should not be granted legal immunity and allowed to be unjustly enriched at the expense of Holocaust victims.

To restore the rights of Holocaust survivors, Congressman Klein and I have introduced the Holocaust Insurance Accountability Act that you, Mr. Chairman, have referenced, a bipartisan measure which currently has 37 co-sponsors, including the distinguished colleagues on this panel, Congressman Schiff, and my colleague from—Congressman Schiff's colleague from California, Congressman Garamendi, who is—his case is mentioned quite a lot in the bill.

Also, Congressman Conyers, the Chairman of the Judiciary Committee, has well as Chairman Cohen, and my good friend, Congressman Coble—we call him “Shug” in our hallway—are some of

the distinguished Members of the House who have cosponsored the legislation. And as Congressman Schiff has pointed out, the bill seeks to restore the rights of survivors by blocking preemption of state laws that were passed to allow Holocaust survivors and heirs of victims to have their day in court and to require insurance companies conducting business in those states to disclose Nazi-era insurance policy information.

Now, Ambassador Stuart Eizenstat, who—a fine gentleman who has for years worked closely on Holocaust restitution and compensation issues, and others who oppose this measure argue that this bill will undermine the foreign policy interests of the United States and that legal peace should be granted to companies that participated in ICHEIC. I disagree. I strongly disagree.

It is not in the interests of the United States to deny survivors their legal rights. Denying their survivors their rights would not only send the wrong message to the rest of the world about how the United States treats individual property and contract rights, but will send the worst possible message about how we treat victims of the Holocaust.

The number of living Holocaust survivors is shrinking significantly every year. It is therefore urgent, Mr. Chairman, that Congress take immediate action aimed at bringing at least a degree of justice and closure to them after all these years. I hope that the bill will soon be brought to the House floor and will ultimately be enacted into law as soon as possible.

With your permission, Mr. Chairman and Ranking Member, I would like to submit for the record a few of the many letters written to me by Holocaust survivors and Holocaust survivor organizations asking Congress to address the issue of unpaid insurance policies.

[The information referred to follows:]

Congress of the United States  
Washington, DC 20515

October 23, 2009

The Honorable Elena Kagan  
Solicitor General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Subject: Generali Holocaust Insurance Litigation

Dear Solicitor General Kagan,

We are writing you in regard to the Generali Holocaust Insurance litigation. We understand that the Department of Justice will be submitting a brief, as requested by the Second Circuit Court of Appeals, on its current position in relation to the views expressed in the October 30, 2008 brief filed by the Department of Justice, which stated that court claims brought by Holocaust survivors and heirs against Generali conflict with U.S. foreign policy.

We urge you to reverse the position expressed by the previous Administration as, in our view, allowing Holocaust survivors and heirs to bring their claims to court to recover for unpaid insurance policies is not contrary to U.S. foreign policy interests.

We are very familiar with the issues involved in this litigation and for many years have been active in the efforts to protect the interests of Holocaust survivors and in helping to address remaining Holocaust-era compensation and restitution matters. There is a legislative record documenting that Holocaust survivors and heirs of victims have been unjustly treated by European insurance companies, including Generali, and that the International Commission for Holocaust Era Insurance Claims (ICHEIC) process, although well-intended, failed to adequately address the ongoing problem of settling World War II-era insurance policies.

We reject the principle that the voluntary ICHEIC process, which ended in March of 2007, is to serve as an exclusive remedy and forum for settling Holocaust-era insurance policies and oppose the idea that the language in the executive agreements the United States entered into with Germany and Austria provide for a basis to bar legal claims brought against foreign insurance companies. In its amicus curiae submitted in *United States Association v. Garumendi*, the Executive Branch made the following statement regarding the executive agreements and their impact on legal claims brought by Holocaust survivors and heirs of victims against European insurance companies:

"[t]hose agreements do not, of their own force, extinguish any claims that Holocaust victims or their families might assert in court against foreign insurance companies."

We agree with the Executive Branch's assessment above and urge for the restoration of the rights of Holocaust survivors and family members of victims to bring their legal claims to American courts.

Moreover, even if these executive agreements do provide for a basis to bar Holocaust-era insurance claims against German and Austrian insurance companies, an argument that we reject, there is nothing that would provide an Italian company like Generali any such "legal peace," as the United States has no such agreement with Italy. And given the absence of such executive agreement with Italy, we view that allowing Holocaust survivors and heirs of victims to assert insurance policy claims in American courts against Generali would not come in conflict with U.S. foreign policy interests.

The number of Holocaust survivors is decreasing significantly every year and it is critical that all necessary efforts are made to help ensure that they obtain justice and some level of closure that they were denied for over six decades. Helping Holocaust survivors and family members of victims must be part of our domestic policy as well as our foreign policy, which includes setting an example by showing the rest of the world that America will not waver or falter in its commitments to justice, human dignity and the rule of law.

Again, we urge the Administration to reevaluate the position expressed in the 2008 brief filed by the Department of Justice asserting that survivors' rights to sue Generali in American courts come in conflict with U.S. foreign policy interests.

We look forward to working with you on helping Holocaust survivors and family members of victims attain justice and prevent insurance companies that have for too long refused to settle Holocaust-era claims from being unjustly enriched.

Sincerely,



ILEANA ROS-LEHTINEN  
Ranking Member  
House Foreign Affairs Committee



ROBERT WEXLER  
Chairman,  
House Subcommittee on Europe



ALCEE HASTINGS  
Member of Congress  
Co-Chair, Helsinki Commission



ELTON GALLEGLY  
Ranking Member  
House Subcommittee on Europe



DAN BURTON  
Ranking Member  
House Subcommittee on  
Middle East and South Asia



RON KLEIN  
Member of Congress



CHRIS SMITH  
Ranking Member  
House Subcommittee on  
Africa and Global Health



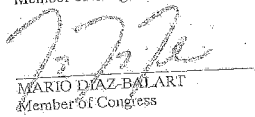
KENDRICK MEEK  
Member of Congress



DEBBIE WASSERMAN SCHULTZ  
Member of Congress



MIKE PENCE  
Member of Congress



MARIO DIAZ-BALART  
Member of Congress



LINCOLN DIAZ-BALART  
Member of Congress

cc. The Honorable Eric Holder  
The Honorable Hillary R. Clinton  
The Honorable Harold Koh



# HOLOCAUST SURVIVORS' FOUNDATION - USA

August 10, 2010

## Member Organizations (Partial List)

Amer. Assn. of Jewish Holocaust  
Survivors of Greater Boston  
Assn. of Holocaust Survivors from  
Former USSR, Los Angeles

C.A.N.D.L.E.S., Ture House, IN  
Child Survivors of Arizona  
Child Survivors of Hidden Children of  
The Holocaust

Coalition of Holocaust Survivors/  
Chloe in South Florida  
Council of Nazi Holocaust Survivors  
Organizations of So. California  
Holocaust Cultural Club, Miami

Holocaust Child Survivors &  
Friends of Greater Hartford

Holocaust Survivors Club of  
Boca Raton

Holocaust Survivors of  
Greater Detroit

Holocaust Survivors of  
Greater Pittsburgh

Holocaust Survivors of  
South Florida

Holocaust Survivors Group of  
Southern Nevada

Isolation Council of  
Jewish Holocaust Survivors

The Jewish Holocaust Survivors &  
Friends of Greater Washington

Jewish Survivors of Latvia, Inc.  
New York

National Assn. of Jewish Child  
Holocaust Survivors, Inc.

New American Jewish Social Club,  
Miami

New Crowsville Friendship Society,  
New York

Survivors of Adirondack City, NJ

Survivors of the Holocaust Assist  
Recovery Project, Seattle

Survivors of the Holocaust of  
New Mexico

Tel Aviv Achshav Hefeshah,  
San Francisco

Congresswoman Ilana Ros-Lehtinen  
Rayburn House Office Building  
Washington DC 20510

Dear Congresswoman Ros-Lehtinen:

We are Holocaust survivors and elected leaders of survivor groups from throughout the United States. Over the years, you and many of your colleagues have been very supportive of Holocaust survivors' rights and interests.

One of the most tragic and unexpected developments in recent years has been the destruction of Holocaust survivors' legal rights to sue insurance companies like General in American courts. Survivors and our families remain stunned at this turn of events. Not only did we endure the worst crime in history, we are American citizens, including many U.S. veterans and war veterans.

Unfortunately, under the recent Federal Appellate decision, survivors and children and grandchildren of Holocaust victims are the only Americans who cannot sue insurers that stole from our families. That is why we wanted to express our gratitude for your work on the amicus curiae brief in support of the Supreme Court certiorari petition in *Woles v. General*. The current law is not only shockingly insensitive to survivors, but extends the power of the Executive branch to act without Congress in ways that were previously unthinkable.

We hope that your colleagues in Congress will join you in this brief, and encourage the Supreme Court to hear the appeal.

Respectfully,

David S. Glickman  
President

Joined by the HSF Executive Committee:

Israel Aronson, Boston MA  
Sello Fisch, Bronx NY  
Nesse Gordin, Washington D.C.  
Louise Lawrence-Israeli, Washington D.C.  
Houbert Karlner, Miami Beach, FL  
David Mermelstein, Miami FL  
Alex Moskovic, Hobe Sound, FL

Loo Richter, Queens NY  
Jack Rubin, Boynton Beach, FL  
Henry Schuster, Las Vegas NV  
Ivar Segalowitz, Great Neck, NY  
Fred Taucher, Seattle WA  
Esther Widman, Brooklyn NY

"JUSTICE AND DIGNITY FOR SURVIVORS"

PHONE (305) 231-0221 EXT. 4243

4200 BISCAYNE BLVD MIAMI, FL 33137-3279

FAX (305) 231-4243

## SOUTHERN CALIFORNIA COUNCIL FOR SOVIET JEWS

AFFILIATE MEMBER OF UNION OF COUNCILS FOR SOVIET JEWS

P.O. Box 1542 • Studio City, CA 91634 • (818) 766-4262 • Fax (818) 766-4321 • E-mail: scsf@earthlink.net • Web: www.scsfusa.com



2/4/2008

Si Frumkin  
ChairmanCongresswoman Heena Ros-Lehtinen  
Washington, DCBOARD  
OF DIRECTORSIra Lapid  
Alexander Polach  
Joseph Rubinfeld  
Ben Gersh

Dear congresswoman Ros-Lehtinen:

I am a Holocaust survivor of the ghetto Kovno in Lithuania and the Dachau concentration camp from which I was liberated by the U.S. Army at the age of 14.

HONORARY  
BOARD  
OF TRUSTEES

Steve Allen (deceased)  
County Supervisor Mike Antonovich  
Congresswoman Howard Berman  
Phil Blazer  
Hon. Tom Bradley (deceased)  
General Shimon Uzi  
Sh. Natan Ullrich  
John Guttman  
Larry Greenfield  
U.S. Senator Orrin G. Hatch  
Bruce Harshbarger  
U.S. Senator Henry M. Jackson (deceased)  
U.S. Senator John McCain  
Rabbi Shimon Fishow  
Dennis Prager  
Vice Mayor Robert J. La Follette  
Rabbi Harold Schiffman  
Congresswoman Henry Waxman  
Governor Pete Wilson  
Shimon Winczberg (deceased)  
Rabbi Aaron M. White (deceased)  
County Supervisor Zev Yaroslavsky

I have been active in the movement for Soviet Jews – an effort that is familiar to you – and in many other endeavors deal with the Holocaust, human rights, democracy and politics. I am proud to consider your colleagues Waxman, Berman and Sherman my personal friends, as well as the L.A. County Supervisor Zev Yaroslavsky who once, in the remote past, was my executive director at the So. Cal. Council for S.J. and still is a personal friend.

I appeal to you to exercise all possible pressure for the passage of H.R. 1746 to get justice and fairness for the destitute survivors who are being swindled by the European insurance companies. Their decade-long policy has been the refusal to open their files and reveal the names of Holocaust era policy holders and pay appropriate settlements to their heirs.

I sincerely hope that you and your colleagues will support H.R. 1746 and that it will serve to bring some relief to those who managed to cheat death 65 years ago.

ASSOCIATED  
ORGANIZATIONS

Atlanta (Federation) Morris Quapp  
Association Soviet Jewry, Chicago  
B'nai B'rith, New York  
Holocaust Survivors Assn. (former USSR)  
Mafia Analysis Foundation

Sincerely,   
Si Frumkin, chairman SCUSJ

~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~  
 Aventura, Florida 33480

February 5, 2008

Congresswoman Ileana Ros-Lehtinen  
 2100 Rayburn House Office Building  
 Washington, D.C. 20510  
 Fax Number: (202) 228-7269

and

Congressman Robert Wexler  
 2241 Rayburn House Office Building  
 Washington, D.C. 20510  
 Fax Number: 202-228-2722

Dear Congressman Wexler and Congresswoman Ros-Lehtinen:

My name is ~~XXXXXXXXXX~~. Ms. Ros-Lehtinen, do you remember when we met at the Greater Miami Jewish Federation last March? I showed you my father's Generali policy that they still refuse to pay. I want to thank you again for all you are doing to help survivors. At the age of 94, I do not have much more time for decency and justice so I hope you are successful in getting HR 1746 passed right away.

ICHEIC allowed Generali to deny my family's insurance claim even though I have a copy of the policy my father bought in 1927, and even though Generali has no proof that it was paid or cancelled before the Holocaust. Generali gave me no records and ICHEIC did not require the company to do so. ICHEIC allowed the company to keep my father's money in spite of everything my family endured.

I was born in Kalocsa, Hungary, in 1914. My parents were ~~XXXXXXXXXX~~. My father operated a successful wholesale business supplying all the general stores in the city. The business was called "Karlóczy Sándor A.G." It was a family owned corporation.

I am attaching a copy of the insurance policy my father bought from "Fisest Altalanos Biztosító Társulat (Assicurazioni Generali)," Policy No. ~~XXXXXX~~ in 1926, for the face amount of "Dollars 2,000 -- ch. New York." The policy was to mature in 15 years. Premiums were payable at the rate of "33.58 Dollar New York." The insured was listed as ~~XXXXXXXXXX~~ whose birthdate is listed as "1886," the year my father was born.

My parents were Holocaust victims, having been deported to a concentration camp in Austria in 1944; they were fortunate to survive and return to Hungary. I personally was captured in 1943 by the Russians and was a POW in Siberia before returning to Hungary in 1948. My father died in Hungary in 1963 and my mother came to the United States in the mid-1970s and died here.



Even with this paper, when I filed a claim to Generali, the claim was denied by the Generali Trust Fund in June 2002. The letter stated: "Policy Nr. 52503 was cancelled or surrendered before the year 1938 i.e. does not refer to the Holocaust Era, and therefore no payment can be offered in respect of it."

Generali's explanation cannot be correct because my father's business continued successfully long after 1938, until his deportation in 1944. It is well known that the Jews of Hungary were not fully devastated by the Holocaust until 1944, and that many businesses were able to function prior to 1944. Further, Generali provided no documentary proof of how it ascertained that the policy was surrendered before the year 1938. I believe I am entitled to such proof under ICHEIC rules, otherwise Generali has failed to overcome the claim established by the policy.

Under ICHEIC rules, the fact that I had a policy was supposed to mean that the burden would then be on the company to ~~prove~~ it paid the policy or that it was no longer valid. Generali never did this, but ICHEIC went along. ICHEIC allowed Generali to violate the ICHEIC rules. Why allow the companies that cheated us decades ago got away with such behavior?

The actual value of the \$2,000 policy today would be between \$75,000 and \$500,000, depending on the rate of return. And, why should Generali get away with only paying the economic loss? What about its conduct in denying payment after the war? Why should I bear the burden of this company's piracy?

HR 1746 will allow me to get this serious matter out of the secret world of ICHEIC and politicians, and into the U.S. courts where it belongs. Isn't this a right that I as an American citizen should be able to take for granted? Something is seriously wrong here and I implore your colleagues in Congress to fix it.

Sincerely,



cc: Congressman Barney Frank (202) 225-6962

~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~

February 5, 2008

Congresswoman Ileana Ros-Lehtinen  
 2129 Rayburn House Office Building  
 Washington, D.C. 20510

Dear Congresswoman Ileana Ros-Lehtinen,

My name is ~~XXXXXXXXXX~~. I am a survivor of the Holocaust. I was only thirteen and my little sister three, when my parents were deported from France to Auschwitz where they perished.

I remember that my parents had insurance with Generali Moldevia which was the subsidiary of Generali Insurance.

At the liberation, after having been in hiding the whole length of the war, my grandmother, my sister and I returned to our hometown but no papers were found to show any proof of policy.

Please Congresswoman Ros-Lehtinen, please help us, the Holocaust survivors, to get the HIR 1746 Bill to pass. We need your help now. We do not have much time left as I am already seventy-eight years old and many are older.

Thank you for reading this letter. I truly hope that you will not let us down.

Sincerely yours,

~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~

[REDACTED]  
[REDACTED]  
[REDACTED]  
February 5, 2008

Congresswoman Ilsema Ros-Lehtinen  
Washington, DC 20515

Dear Congresswoman Ros-Lehtinen:

As the daughter of two Holocaust survivors and an active member of the survivor and second generation community I am writing to urge you to pass the Holocaust Claims Insurance Accountability Act of 2007 (HR 1746.) This legislation will require insurance companies doing business in the United States to publicly disclose all Holocaust-era insurance policies.

HR 1746 recognizes that less than 3% of the number and value of insurance policies owned by Jews at the beginning of World War II have been satisfied through the International Commission on Holocaust Era Insurance Claims (ICHEIC) process, which ended last spring. The bill will require these insurance companies to open their books and fully disclose the names of all World War II-era policyholders so that Holocaust survivors and their relatives can pursue legitimate claims. HR 1746, if enacted into law, will give survivors the only reasonable chance they will have to obtain insurance policy information withheld for decades and obtain judicial relief.

Holocaust survivors whose ICHEIC claims were denied or who may never have filed claims because they were unable to obtain policy documentation have been prevented from seeking redress in the courts. HR 1746 requires the insurers to disclose the necessary information, HR 1746 allows survivors to go to court to get an impartial judge and jury to examine all of the records surrounding the insurers' conduct and assign financial responsibility. Without the passage of HR 1746 those survivors' rights are finished and they, together with their heirs and beneficiaries, will have no chance to realize a full accounting or "fair compensation" for policies sold to their families.

HR 1746 will force insurers who profited from the Holocaust to be accountable for their actions. The bill will inject transparency into the claims process and give survivors at long last a legal means in which to recover payouts from those policies.

Thank you for your time and consideration of this urgent and most important legislation.

Sincerely,  
[REDACTED]  
[REDACTED]  
Generation After -- [REDACTED]

~~CONFIDENTIAL~~  
~~CONFIDENTIAL~~  
~~CONFIDENTIAL~~  
~~CONFIDENTIAL~~

February 5, 2008

The Honorable Ilana Ros-Lehtinen  
 2160 Rayburn House Office Building  
 Washington, D.C. 20510

By FAX: 202-226-7269

Re: H.R. 1746 Legislation to Address Holocaust Insurance Claims

Dear Congresswoman Ros-Lehtinen:

Thank you for sponsoring H.R. 1746, a bill requiring disclosure of Holocaust-era insurance policies. As you are well aware, many of the European insurance companies have not been forthcoming in providing information about thousands (perhaps hundreds of thousands) of life and property insurance policies that were issued to victims of the Nazi atrocities.

The case of our family is illustrative of the problem. My grandparents were deported from Trieste, Italy and murdered in Auschwitz in 1943. My grandfather apparently had a life insurance policy with Assicurazioni Generali, a fact I learned in 1998 after responding to that company's original public notice seeking potential participants for a settlement. However, in my communications with Generali, the company indicated that my grandfather's policy had been surrendered before 1936. The company refused to provide any documentation concerning the circumstances surrounding the issuance and surrender of the policy. Equally perplexing is the fact that my grandfather's name never appeared on the ICHEIC website even though ICHEIC or Generali supposedly matched Generali records against records of Holocaust victims at Yad Vashem (where my grandparents have long been listed).

HR 1746 would require the insurance companies to open their archives, force them to disclose all information and allow claims to proceed in American courts. It's time for the insurance companies to come clean!

Whether or not my family is entitled to file a claim is uncertain since we don't have the full extent of the information about my grandfather's policy, but absent this kind of legislation, we have no opportunity to press the insurance company for more information. More importantly, there are thousands of other families and survivors who should be entitled, but are unable, to seek resolution of Holocaust-related insurance policies. Many are elderly and possibly unaware that the insurance companies continue to withhold information about unsettled policies.

Again, thank you for sponsoring this legislation.

Respectfully yours,

~~CONFIDENTIAL~~  
~~CONFIDENTIAL~~

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

February 6, 2009

Congresswoman Illeana Ros-Lehtinen  
2180 Rayburn House Office Building  
Washington, D.C. 20510  
Fax Number: (202) 226-7269

and

Congressman Robert Wexler  
2241 Rayburn House Office Building  
Washington, D.C. 20510  
Fax Number: 202-226-2722

Re: ICHEIC and Insurance Bill 1746

Dear Representatives Ros-Lehtinen:

Dear Representative Wexler:

I am writing to tell you about my unfortunate experience with the International Commission (ICHEIC) and the urgency for passage of legislation to allow survivors like myself to have the ability to get information from the insurance companies and take them to court if necessary.

I am a 78 year old Holocaust survivor from Paris, France. I somehow managed to survive against all odds, and I'm sure I don't have to tell you everything my family and I went through.

When ICHEIC was started, I filled out forms naming many of my relatives who I knew were prominent and relatively well-to-do residents of Budapest, Hungary, including my uncle ~~Max Rosenthal~~ who was a very prominent and wealthy physician. Generali responded with a letter stating that it had sold my uncle one policy in 1921 worth 60,000 Hungarian crowns, but it was not payable because it lapsed before the Holocaust. However, the company did not provide me with any information to justify that conclusion.

Considering my uncle's circumstances, I find it very unlikely that he would have only had one policy for a relatively small amount. In addition, Generali claimed that it did not sell any policies to other family members. However, given the auspicious response on my uncle's one policy they acknowledge, why would I believe these denials?

HR 1746 would enable survivors like me - with the assistance of lawyers of our own choosing - to finally see for ourselves what information is in the companies' records. Given the companies' disgraceful behavior during and after WWII, why should we be the only Americans who don't have such rights against insurance companies who treated our families in bad faith?

I thought I was getting on in years when ICHEIC started, and now it is 10 years later. Will I ever see justice in my lifetime? What about the other survivors who aren't as healthy as I am who might feel too frustrated to speak up? Please give us our rights back and allow us to control our own affairs. Really, all we need is the same protections other Americans have against those avaricious insurance giants.

Thank you very much.

Sincerely,

[Redacted Signature]

cc: Representative Barney Frank - (202) 225-6652 (Fax)  
Representative Mark Steven Kirk - (202) 225-0837  
Representative Janice Schakowsky - (202) 225-6690

February 4, 2008

By Fax: 202-225-5620

Dear Congresswoman Ros-Lehtinen,

I am [REDACTED] from Houston. I am a survivor of the Holocaust. I will not take up your time to tell you the horrors my family endured during that horrible time or what happened to me. I know you're busy. My father owned a business and a home in prewar Germany and I've been told everyone had insurance coverage. We all are very grateful for you all your hard work and bless you greatly.

I am president of the [REDACTED] Council of Jewish Holocaust Survivors, elected to represent many survivors and their families here in the [REDACTED] Metro area, and all our stories about what we have had to go through to get any justice whatever in trying to get compensation from the insurance companies.

I knew our family had insurance. I tried to present information and got no responses. Now we learn that through an International Commission on Holocaust Insurance only three percent (3%) of the total of the policy they stole from us was paid out at the time last year when this commission closed. Three percent of over \$17 billion owed to all of our families at a minimum and they said they did a good job? Those who say they represent our interests say they did a good job. We think not!

They wouldn't even open their archives which listed our families names and then had the nerve to demand birth and death certificates from all of us who either died in the camps or barely survived and came out with nothing but our bodies. All was taken from us and now this tragedy.

I am presently battling a terrible disease. So many survivors I represent are in worse condition here in [REDACTED] living in poverty literally and the insurance companies are unjustly enriched and nothing is done about it in the United States of America.

I, we all, need your help. The Financial Services Committee in the Congress is holding a hearing on a bill introduced by Congressman Waxler and Congresswoman Heana Ros-Lehtinen, HR 1746. Urge your colleagues on the Committee to vote for this bill as the Foreign Affairs Committee already did and urge our senators to introduce and pass out this legislation soon. We have very little time left and it is one minute to midnight for us survivors. WE NEED YOUR HELP NOW! You in Congress are our only chance to have justice! Don't let us down, please!

*The insurance companies were to get legal peace only after we the survivors got legal and moral peace and that has not happened for us and our families. Help us survive a little while longer, please. Thank you for reading my letter. Do not let us down.*

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED] Council of Jewish Holocaust Survivors

Representing over 250 Survivors of the Holocaust and their families

*This letter was sent to all the members of the Financial Services Committee and Congressman Waxler and Barney Frank. We thank you for all of your efforts!*

February 5, 2008

Congresswoman Ileana Ros-Lehtinen  
2130 Rayburn House Office Building  
Washington, D.C. 20510  
Fax Number: (202) 226-7269

and:

Congressman Robert Wexler  
2241 Rayburn House Office Building  
Washington, D.C. 20515

As a Holocaust survivor who has been pursuing fairness and decency from Generali for nearly 6 decades, I want to express my gratitude for your sponsorship of HR 1746. I hope you are able to convey to other members of the House of Representatives, and the Senate just how important this legislation would be in its real impact.

My family lived in Lithuania before World War II. When I was born, my father purchased an insurance policy from the Italian company Assicurazioni Generali, S.p.A. The policy, with a face amount of \$2,000 US Dollars, was to make sure there would be money for my education when I grew up. Well I grew up all right, but not the way anyone expected. After four years in several concentration camps, I was liberated in Dachau on April 29, 1945 by the Third American Army. My father and mother miraculously survived, but my younger brother perished.

After the war, my father advised me to go to Rome because that was where the money was to pay for my education. He went back to Lithuania and by another miracle, my father retrieved the insurance policy he had bought for me from the hiding place where he had buried it. I went to the Generali headquarters Piazza Venezia in Rome with the policy number - 332 - and asked for payment. They said they would look for the number and contact me but they never did. I did finish my medical education in Italy but it was very hard living on only \$10 as I was required to do.

I graduated and moved to California. My parents were allowed to leave Lithuania in 1960 and my father brought the original policy which I then brought back to Rome to demand payment. Remember, the \$2,000 U.S. Dollars was a big policy by 1960. The Generali people again promised to look into it and contact me in California. They never did.

Decades later after ICHEIC was created, I again made a claim. Generali denied it because it said the policy in "Litas" or "Lata" currency was not worth anything. But as I said it was a dollar policy so Generali didn't read it and ICHEIC was beyond useless as all it did was buffer Generali from the harsh reality of its conduct toward me since 1945. When Generali finally made an offer of a few thousand dollars, I refused.

Under California law, I would be entitled to be compensated for the full value of the policy, access to company records to see the policies it likely sold my other relatives, and even damages for the bad faith the company displayed to me in those years after WWII. Yet I have faced endless hurdles in obtaining the full truth from Generali because I have been denied access to our court system. Why are the courts siding with the insurance thieves? Why has Congress sided with




them up until now? It is a mystery to me and other survivors how we can be treated this way in the 21<sup>st</sup> century, in America no less.

Under HR 1788, my rights under California law would be restored, and I could have a real judge and a real jury decide what is right. ICHIC might have been well intended by some, but it has caused thousands of Holocaust survivors great heartache. To promise a fair and easy and open system as it did, only to become a shield and shield for insurance companies, is a farce that survivors should not have to endure.

Please make HR 1746 law and allow justice to be done between me and General.

Thank you very much,

Sincerely,

A large, dark, rectangular redacted area covering the signature of the sender.

cc: Chairman Barney Frank (202) 225-6652  
Rep. Henry Waxman (202) 225-4089  
Rep. Brad Sherman (202) 225-5679

Congresswoman Ilana Ros-Lehtinen  
2160 Rayburn House Office Building  
Washington, D.C. 20510

February 2, 2008

Dear Congresswoman Ros-Lehtinen,

My name is [REDACTED]. I am a survivor of the Holocaust. I lost my Parents, Grandparents, Aunts, Uncles and Cousins in the Holocaust. Just my sister and I survived. I was only fifteen years old when I was taken to the Concentration Camp.

I remember that my parents and grandparents had insurance with Generali Moldavia which was the subsidiary of Generali Insurance.

When I was liberated and returned to my home town, I found our house and business was destroyed and therefore cannot show any proof of a policy. The policies were burned along with my parents in Auschwitz.

Please, Madam Congresswoman, please help us, the Holocaust survivors, to get the HR 1746 Bill to pass. We need your help now. We do not have much time left as we are already eighty years and older.

HR 1746 would require Generali to publish all of the names of its customers from the Holocaust time, and would require the company to produce all the information ICHEC allowed it to keep secret. It would also allow survivors like myself, to sue the company in U.S. courts. I believe I, and all Holocaust survivors are entitled to have a real judge and jury decide whether or not the company treated my family correctly. This is a basic American right but we need Congress to restore that right.

I will be attending the Financial Services hearing reference HR 1746 Thursday Feb. 7<sup>th</sup> At 9:30am. I would be very happy to meet with you personally once again.

Thank you for reading this letter. I truly hope that you will not let us down.

Warmest Regards,

[REDACTED]

[REDACTED]

Thursday, January 03, 2008

Congresswoman Ilana Ros-Lehtinen  
US Congresswoman, District 18  
2160 Rayburn House Office Bldg  
Washington, DC 20515

Dear Congresswoman Ros-Lehtinen,

My name is [REDACTED] and I am a US citizen and a Florida resident. I was sent to the Auschwitz concentration camp in 1944 when I was 20 years old. During the Holocaust I lost both of my parents, my grandparents, my two sisters, and my two year old nephew.

After the war, I found a document that was hidden by my father, [REDACTED] (also spelled [REDACTED]). This document contained his life insurance policy for 25,000 gold dollars. In 1945, when I presented the insurance claim to the insurance company, they requested his death certificate as the prerequisite to pay the claim. Without the death certificate, they said the policy was invalid.

A few years ago, the International Commission on Holocaust Era Insurance Claims revived our hope for justice with the insurance companies and I filed my claim (Claim # [REDACTED], reference [REDACTED] life insurance). Unfortunately, this effort produced no results.

I am very glad that The Holocaust Claims Insurance Accountability Act of 2007 (H.R. 1746) legislation has been introduced in Congress and if passed, the insurance companies doing business in the US, that profited from the Holocaust, will be held accountable for their actions.

I urge you to please support the 37 co-sponsors in the House and the thousands of constituents and Holocaust survivors that demand justice, by passing bill HR 1746.

I am happy to provide you with any additional information that may be helpful and would be at your service to testify in congress should you deem it helpful.

I wish you and your family a happy and healthy New Year.

Sincerely,

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Ms. ROS-LEHTINEN. Thank you again, Mr. Chairman and Ranking Member, for granting us the opportunity to testify at this hearing.

Thank you very much.

[The prepared statement of Ms. Ros-Lehtinen follows:]

PREPARED STATEMENT OF THE HONORABLE ILEANA ROS-LEHTINEN,  
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Page 1 of 3

**The Honorable Ileana Ros-Lehtinen**  
**Ranking Member, Committee on Foreign Affairs**  
**Testimony before the Subcommittee on Commercial and Administrative Law**  
**Committee on the Judiciary**  
**“Holocaust Insurance Accountability Act of 2010”**  
**2141 Rayburn House Office Building**  
***September 22, 2010 at 11:30a.m.***

Thank you Chairman Cohen and Ranking Member Franks for the opportunity to testify on an issue of great importance to me – the legal rights of Holocaust survivors – and the responsibility of insurance companies as it relates to Holocaust-era policies.

I have the honor and the privilege of representing a district in South Florida which is home to one of the largest communities of Holocaust survivors in the nation.

Throughout my tenure, I have worked with several of our colleagues to protect the interests of the survivors against governments, banks, and others who have benefitted from the atrocities committed during the Holocaust and have worked on issues relating to Holocaust-era compensation.

One of the Holocaust-related issues that remain unresolved, and one that many of my constituents regularly reach out to me on – asking for Congressional action – is the matter of unpaid Holocaust-era insurance policies.

Although many decades have passed since the world witnessed the terrible crimes perpetrated by the Nazi regime, many European insurance companies continue to refuse to disclose Holocaust-era insurance policy information or pay Holocaust survivors or families of victims for policies purchased before or during World War II.

These companies have unfairly denied claims, alleging that Holocaust survivors and heirs of the victims, lack proper documentation, such as death certificates, to prove insurance policy ownership.

Denial of claims based on this argument is shameful and outrageous since concentration and death camps, in which many of the Holocaust victims perished, did not issue death certificates.

Further, many of the documents the victims had to substantiate their claims were confiscated by the Nazis or left behind by the victims while fleeing.

In many cases, the only records of policy ownership are in the vaults of the insurance companies, many of which continue to refuse to disclose these documents.

Essentially, what these insurance companies are saying is that they will only settle these claims if the survivors provide policy documentation, which only the insurance companies have and are refusing to disclose.

In 1998, the International Commission on Holocaust Era Insurance Claims or ICHEIC was established, with the objective of settling Holocaust-era insurance claims.

However, the voluntary ICHEIC process was controlled by the European insurance companies and lacked the necessary oversight and enforcement mechanisms.

The insurance companies were never forced to adequately disclose policy information.

If the policy information was not disclosed, how are the survivors supposed to prove policy ownership?

ICHEIC was to apply a relaxed standard of proof when processing Holocaust-era claims, taking into account the special circumstances associated with the Holocaust.

However, evidence indicates that ICHEIC often failed to apply the relaxed standard of proof and, in some cases, placed heavier burden of proof on the survivors than would have been required in a court of law.

The ICHEIC process ended in 2007 after producing payments for only a small fraction of the value of Holocaust-era insurance policies.

A flawed process, which no longer exists, should not be deemed as the exclusive remedy for survivors to recover under their policies, as proposed by those who oppose the Holocaust insurance legislation that I introduced with Congressman Klein.

Some of the insurance companies have stated that they will continue to process claims under ICHEIC-like rules.

But these are empty promises that will lead to little, if any results.

History has already shown that, despite wishful thinking, insurance companies will not do the right thing and will not voluntarily disclose information and pay out claims to Holocaust survivors.

Holocaust survivors, just like anyone else, should have the right to have their day in court to recover under their policies.

Allowing the insurance companies to continue to withhold information and payments, as they did under ICHEIC, without allowing claimants to have access to U.S. courts, is unacceptable.

Companies that have shamefully failed to disclose Holocaust-era policy information and adequately settle claims, should not be granted legal immunity and allowed to be unjustly enriched at the expense of Holocaust victims.

To restore the rights of Holocaust survivors, I introduced the Holocaust Insurance Accountability Act, a bipartisan measure which currently has 37 cosponsors, including our distinguished colleagues on this panel, Representatives Schiff and Garamendi.

Congressman Conyers, Chairman of the Judiciary committee, as well as Chairman Cohen, are just some of the other distinguished Members of the House who have cosponsored this legislation.

The bill seeks to restore the rights of the survivors by blocking preemption of state laws that were passed to allow Holocaust survivors and heirs of victims to have their day in court and to require insurance companies conducting business in those states to disclose Nazi-era insurance policy information.

Ambassador Stuart Eizenstat, who has for years worked closely on Holocaust restitution and compensation issues, and others who oppose this measure argue that this measure will undermine the foreign policy interests of the United States and that "legal peace" should be granted to companies that participated in ICHEIC.

I disagree.

It is not in the interests of the United States to deny survivors their legal rights.

Denying the survivors their rights would not only send the wrong message to the rest of the world about how the United States treats individual property and contract rights, but will send the worst possible message about how we treat victims of the Holocaust.

The number of living Holocaust survivors is shrinking significantly every year.

It is therefore urgent that Congress take immediate action aimed at bringing at least a degree of justice and closure to them after all these years.

I hope that this bill is brought to the House Floor and ultimately enacted into law as soon as possible.

Thank you again for granting me the opportunity to testify at this important hearing.

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Mr. COHEN. You are very welcome, and thank you for your testimony. And there is a bit of a protocol issue, as I understand. It is my understanding you might have some place you would like to go to and there is some issue, but I have always deferred to the Ranking Member and potential—whatever. So if you would like to

be relieved with your lovely daughter, you are welcome, and if you would like to stay, you are welcome, too.

Ms. ROS-LEHTINEN. Mr. Chairman, I thank you so much for the privilege of sneaking out of here. I have another forum that I have arranged in the Rayburn Building that started——

Mr. COHEN. You are dismissed, and you can call me “Shug.”

Ms. ROS-LEHTINEN. Thank you, sir.

[Off Mike]: Don’t do it.

Mr. COHEN. Our third witness is Congressman John Garamendi. Congressman Garamendi is an outstanding new Member of the United States House of Representatives, elected November 5, 2009. Before being elected to the House, he was the 46th lieutenant governor of California. He brings over 34 years of public service to the House.

He was elected to the California State Assembly in 1974 and the State Senate in 1976, where he served for 14 years and attained the position of Senate majority leader. In 1991, Mr. Garamendi became California’s first elected insurance commissioner, and in 1995, appointed by President Clinton as deputy secretary of the U.S. Department of the Interior, where his efforts led to significant environmental improvements for the Nation and California, which possesses so many of our beautiful natural resources.

In 2002, Representative Garamendi was reelected California’s insurance commissioner. And I am sure he can speak better of insurance than some of the people involved in this issue. That is why we had healthcare reform, because we knew you can’t trust the insurance folk on certain issues.

Mr. Garamendi, would you proceed with your testimony?

**TESTIMONY OF THE HONORABLE JOHN GARAMENDI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. GARAMENDI. Mr. Chairman and Ranking Member Franks, Members of the Committee, my colleagues here at the table, I hadn’t expected to get back into this issue. The survivors of the Holocaust, their family, their heirs, their children, suffered a major defeat when the U.S. Supreme Court, on a five to four decision, overturned a California state law that would have simply provided survivors and their families with information about what policies their parents, aunts and uncles may have purchased in Europe prior to World War II and during the war.

That decision slammed the door on something that is just fundamental. That is information. All of us here have talked about justice, but when access is denied, justice is denied. And access to information was the first step of access to the courts and to resolution and resolving the question of claims.

A lot of children survived the Holocaust. Their parents didn’t. They have no knowledge of what their parents may have purchased in way of insurance, but they know that their parents lived during that period and may very well have had insurance policies.

There is absolutely no way for them to find that information. California passed a law in 1999 that would have given them that information by requiring the insurance companies to disclose policies, the names, the locations.

The American Insurance Association, carrying out what I believe to be the first commandment of the insurance companies, and that commandment is to pay as little as late as possible, filed suit against that law, and I was left to defend it. We lost in the United States Supreme Court, and access and knowledge was denied, and justice was therefore denied.

ICHEIC did a credible job, but not a perfect job. I had a lot of questions when I was insurance commissioner with ICHEIC about their decisions, about their processes.

The work is incomplete. It is simply incomplete. The insurance companies have the information about the policies that they sold during this critical period, and to this date, that information has not been generally made available, or even made available in a manner that would allow children, heirs, grandchildren and survivors to know if a policy actually exists and to pursue their rightful claim to the benefits of that policy.

This law is pretty simple. It allows state laws to move forward. The California law is still on the books. It was never repealed. And if this bill goes forward and becomes law, then information is made available.

I understand why the insurance companies don't want people to know what is going on, because they want the money. They don't want to have to pay the claims. But they have contractual obligation to pay claims. And if people knew that their parents, their grandparents actually had purchased a policy, they can therefore be in a position to make a claim.

It is a matter of simple justice. It is a matter of simple fairness. And my view is the insurance companies owe an obligation to all their policyholders, to all the heirs and potential claimants against those policyholders to make the information available.

It is an extraordinary situation. God willing, it will never happen again, but it did happen. And because it happened, because it happened and because of the subsequent actions of the insurance companies, a wrongdoing has taken place.

Now specifically, Generali comes into this question. My recollection of ICHEIC and what went before it was that Generali was never party to that agreement. And for Generali to be arguing that they are covered by ICHEIC is simply incorrect.

Now, I have had great battles with Generali over this. I didn't know I would have another opportunity to take a swing at them, but by God, I am going to.

And I am going to use this forum to say it is a matter of contractual obligation, say nothing of justice, that every insurance company—every insurance company—that sold a policy during that period of time has a requirement, under simple justice, to make information available about the existence of a policy, the name of the purchaser, and others that are named in the policy so that family members can go to a file, a list, and discover that a policy exists, and then they can pursue it in a court of law where they have access to justice and presumably an appropriate outcome.

It is very important that this bill pass, and I urge you to do so. And thank you for the opportunity to reengage on this matter. And I have written testimony—I would just say one correction in what



was presented to you. In 1999, I was not the commissioner, so instead of during, it is after my term.

[The prepared statement of Mr. Garamendi follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN GARAMENDI,  
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

**Congressman John Garamendi's Testimony Before the Judiciary**

**Committee's Subcommittee on Commercial and Administrative Law**

**Hearing: H.R. 4596, the "Holocaust Insurance Accountability Act of**

**2010," September 22, 2010**

Chairman Cohen and Ranking Member Franks, thank you for allowing me the opportunity to testify before your subcommittee on an issue of great importance—that of allowing states to enforce disclosure laws and access to courts for covered Holocaust-era insurance policy claims.

I come before this subcommittee today in support of H.R. 4596, the Holocaust Insurance Accountability Act of 2010, with the experience of having served as Insurance Commissioner for the State of California, where I spent much time working on this issue.

For decades, Holocaust survivors and their heirs have sought the financial security that is rightfully theirs, paid for during the dark days preceding and during World War II to foreign insurance companies. H.R. 4596 would allow states to enforce laws extending the statute of limitations for suits against insurance companies arising out of their failure to pay on policies entered into during the Nazi era. Once signed into law, this bill will rightfully give Holocaust victims and their heirs who are now living in the U.S. the legal authority needed to fight injustice, granting them the authority to go after the foreign insurance companies who have denied them remuneration for more than half a century.

As this committee, those assembled in this chamber, and all those listening to these proceedings know, the Holocaust was a tragedy of unimaginable proportions, an act of pure evil, that marks one of the darkest periods in human history. Six million Jews died as the Nazi war machine roared across Europe, decimating the Jewish people and their communities, forcing the survivors into concentration camps.

It is a testament to the human spirit that some survived the Nazi's program of systematic genocide. Many emerged with just the clothes on their backs, as Nazi soldiers had been ordered to strip them of their material wealth, documents, and, in many cases, went so far as to rip gold fillings out of the mouths of the dead and dying. These men, women and children survived unspeakable atrocities, and were robbed of their physical security by Nazi soldiers whose cruelty has been so well documented by the survivors themselves, such as Eli Weasel in his book Night.

Before, in peaceful times, and even during the war, members of the Jewish community throughout Europe sought to protect their families by purchasing insurance policies to safeguard family assets, plan for retirement, provide dowries for their children and save for their children's education.

In the aftermath of the war, as survivors sought to rebuild their lives, they were again victimized, not by hostile military forces, but by the very insurance companies they and their families relied upon for financial security. In the concentration camps they had lost their human right to physical security, and now insurance companies sought to rob them of the financial security needed to help them rebuild their lives after the ravages of war. In a cruel twist of fate, survivors of the Holocaust insurance claims were rejected because they lacked the necessary paperwork. Documents that the insurance companies knew, or should have known, were either confiscated by the Nazis or lost in the ashes of a global war that decimated Europe.

The International Commission on Holocaust Era Insurance Claims (ICHEIC), established in 1998, decades after the end of WWII, tried to remedy some of the injustice perpetrated by the insurance companies by examining the claims of Holocaust survivors and their heirs. An important fact about the ICHEIC was that the U.S. government was not part of the organization, or the agreement that created it; rather it was between private individuals and private insurance companies. Some were helped by the ICHEIC, but, sadly, for others, justice was eluded.

During and after the war, many Holocaust survivors immigrated to the United States, where some tried to put the horrors they experienced behind them, building a new life in a country founded on the promise of justice for all and religious tolerance. However, some never forgot the insurance companies that had denied them the financial security they so desperately needed after the war.

As Americans, we can all be proud that their cries for justice did not go unheard. In my home state of California, during my first term as Insurance Commissioner, the state passed a law called the Holocaust Victims Insurance Relief Act of 1999 (HVIRA). HVIRA required insurance companies doing business in California to disclose the list of all policies issued by the companies themselves or anyone “related” to it. This was an effort by the state to help its citizens; a law that did not interfere with any existing agreements the U.S. had at the time with any foreign entities and/or nation states. Nor did it intrude into exclusive territory of the Executive Branch to make such agreements.

Unfortunately, the U.S. Supreme Court disagreed with California’s decision to empower its citizenry, denying the state’s law whose sole purpose was to help Holocaust survivors and their heirs claim insurance policies that were rightfully theirs. In a 5-4 decision in American Insurance Association, et. al. v. John Garamendi, Insurance Commissioner, State of California, Justice Souter’s majority opinion held that the state law was preempted.

The Court majority found that California’s law was unconstitutional under the Preemption Doctrine. This decision ignored the fact that California sought to make private entities disclose information to its citizens, which in no way interfered with the power of the Executive Branch to enter into agreements with foreign powers or any other diplomatic rights afforded it under the Constitution. Nevertheless, the Court found that “California seeks to use an iron fist where the President has consistently chosen kid gloves.”

Thankfully, this Congress will now act to rectify the Supreme Court's decision. H.R. 4596, offered by my colleague Congresswoman Ileana Ros-Lehtinen, would remedy the Supreme Court's decision. This bill recognizes that this matter is between private citizens in this country and foreign insurance companies, and allow for Holocaust survivors and their descendants to finally receive the justice and financial security so long denied to them, by the very companies they paid to insure their lives. This bill is a fine example of American justice, seeking to right the wrongs of the past, by providing a resolution to the survivors and heirs of one of humanity's darkest chapters.

Chairman Cohen and Ranking Member Franks, I thank you for allowing me to testify before this subcommittee and hope to serve as a resource as this Congress works on this important matter.

Mr. COHEN. Staff will be appropriately admonished. But thank you for all of your other good deeds, many of which were not mentioned, and thank you for your testimony.

I don't believe there are any questions. If not, we thank each of you for your testimony and for your good work and your service. You are relieved of—

Mr. FRANKS. Chairman, one question—

Mr. COHEN. Well, there is one question, excuse me, for Mr. Garamendi.

Mr. Franks?

Mr. FRANKS. Mr. Garamendi, some of us have a concern about reparation-type bills in general because the concern is that those who did not commit the act would be forced to compensate to those people who the act was not perpetrated against. This seems to be very different.

It seems that, if I understand, the insurance companies were forced to pay some of these policy claims to the Nazi government, and that, in some cases, the bottom line is that they did insure certain individuals that were killed and murdered as a result of the Holocaust, and that you are suggesting that this is a matter of enforcing those insurance policies from those companies that still exist. This is not a—doesn't go outside that parameter, correct?

Mr. GARAMENDI. Yes, in part. Somebody purchased a policy, and that policy—let us say it is a life insurance policy—most of what we are talking about here is life policies, although there are clearly issues of property-casualty policies that have yet to be pursued.

But they purchased a policy. The individual was killed during the Holocaust, and perhaps most of the family—there may be a survivor, but the survivors don't know that that policy is there. And it seems to me they have a—they ought to have the right to pursue that policy. It is not a matter of reparation. It is a matter of contractual obligation. It is quite different than a reparation.

Now, whether the insurance company was forced by the Nazi regime to pay money, or to somehow transfer money from the insurance company to the Nazi government, I don't know about that and whether it was directly related to a policy or not, we have no specific information on that. But nonetheless, that contract still remains.

Mr. FRANKS. So to be clear, what your objective here is to enforce policies that were issues in that day and time as they would have normally had it not been for the interdiction of World War II and some of the other confusions that took place. Is that correct?

Mr. GARAMENDI. That is correct, with a caveat that the owner of the policy, and quite possibly most of the family were murdered, and knowledge about the policy may or may not be passed on/

Mr. FRANKS. So this would force the insurance companies to divulge that information.

Thank you, Mr. Chairman.

Thank you, sir.

Mr. COHEN. Thank you Mr. Franks I appreciate you are clarifying that issue. I and some campaigns have been—they tried to parallel reparations and contract, and this is contract. And it is—although you could argue labor is equivalent to policy, but that is a whole other step. But I thank you for clarifying.

Mr. GARAMENDI. Thank you.

Mr. COHEN. First panel is completed. We appreciate everybody here. The—we—same rules apply, the red, green and yellow.

You may not know them as well. Red means you have started your presentation. You have 5 minutes to make your presentation. The lights will turn to yellow when you have 1 minute left. We

hope you would start to conclude—it starts with green, excuse me, and then we get to yellow, and then red means your 5 minutes is up.

So you have green for 4 minutes, yellow for one, and then red means your time is up. Again, though, 5 minutes of questioning for each member of the panel. There will be an opportunity to extend questions to you later if they are not asked here, and we would ask you to respond to those as quickly as possible.

Second question empaneled, one, come forward please, sign in, please, and tell us your name. Not quite yet, just trying to expedite the folk. There we go.

So I want to thank each of you participating today's hearing. Our first witness on this panel is Ambassador Stuart Eizenstat. Ambassador Eizenstat heads the Covington & Burling Law Firm in the International Practice area. His work at Covington focuses on resolving international trade problems and business disputes with the United States and foreign governments, international business transactions and regulations on behalf of United States companies and others around the world.

During a decade and a half of public service in three United States administrations, the ambassador has held a number of key senior positions, including Chief White House domestic policy advisor to President Carter. During the Carter Administration, ambassador to the European Union, and undersecretary of commerce for national trade, undersecretary of state for economic, business and agriculture affairs, and deputy secretary of the treasury all during the Clinton administration.

During the Clinton administration, he held a prominent role in the development of key international initiatives and was special representative to the President and secretary of state on Holocaust-era issues. A denizen of Atlanta, Georgia, we welcome you, Ambassador Eizenstat. Will you begin your testimony?

**TESTIMONY OF AMBASSADOR STUART E. EIZENSTAT, SPECIAL ADVISOR TO THE SECRETARY FOR HOLOCAUST ISSUES, OFFICE OF HOLOCAUST ISSUES (EUR/OHI), U.S. DEPARTMENT OF STATE**

Mr. EIZENSTAT. As many of you know, I have devoted a substantial part of my life to raising the cause of justice for Holocaust survivors and their families when it was not on the world's agenda for 50 years and when it was largely forgotten. From the U.S. Holocaust Memorial Museum, which I helped initiate, to leading \$8 billion in settlements for Jewish victims of the Holocaust and their families, and for non-Jewish victims of Nazi oppression, I have devoted all this time to it.

Despite the lofty motives of this bill, it would put all of this progress at risk and would imperil future and ongoing negotiations for Holocaust survivors and their families, or indeed for any claims process which relies on the commitment of the United States government.

Mr. COHEN. Maybe if you would move a little bit from the mic, we won't get the feedback. I am not sure.

Mr. EIZENSTAT. Quite bluntly, it would undermine the credibility of the United States of America.

We owe an international obligation to Germany and Austria to provide the legal peace that unlocked this \$8 billion in settlements. This bill would reopen lawsuits against European insurers for Holocaust-era claims already settled by a court decision in the Generali class-action case, by an international commission, ICHEIC, established through a cooperative effort among state insurance commissioners, victim's advocates, Jewish groups and the State Department. It would undo the policy of the last three Administrations to resolve Holocaust-era claims by diplomatic negotiations and alternative dispute mechanisms rather than litigation.

The breadth of this is extraordinary and breathtaking. It would overturn a Supreme Court decision, a Court of Appeals decision, indicating that the foreign policy of the United States preempts conflicting state laws. It would allow state laws to enable lawyers who could have participated in the negotiations I led for 10 years to bring new lawsuits against insurance companies who have already paid hundreds of millions of dollars to Holocaust survivors and their heirs with the clear express understanding that the United States government would support a carefully negotiated legal piece so they wouldn't have to pay twice.

It would, therefore, conflict with our longstanding foreign policy and executive agreements. It would forbid the State Department to issue statements of interest in Holocaust-era cases when those were a central part of the bargain that led to the payment of all of this money. And it would cause the U.S. government to repudiate obligations we have made to foreign governments and raise questions about our ability to adhere to any future agreements.

ICHEIC was created at the initiative of state insurance commissions, not the insurance companies in Europe, I can assure you, precisely because they knew that the road of litigation was slow, costly, and given the passage of 50 years, unlikely to lead to recovery by survivors.

It was a claimant-friendly process encouraging people to file claims even if they only suspected but couldn't prove someone in their family was a beneficiary. They paid thousands of claims that could never have gotten to the courthouse door.

For example, they paid thousands of claims on companies that were defunct. They paid thousands of claims, indeed tens of thousands of claims, where the claimant couldn't name an insurance company. They paid claims on companies that had been nationalized by the communists. They paid 31,000 claims where there was absolutely no evidence, only anecdotal stories.

These would never have been recoverable in a court. That is what the ICHEIC process did, and it did it by creating a list of 500,000 possible names at their expense, auditing the insurance companies to make sure that this was credible.

Now, how did we get \$8 billion in recovery from the Swiss, from the Germans, from the Austrians, from the French and from others? With a very essential bargain: legal peace.

I can tell you, it was the most excruciatingly difficult negotiation I have ever had. Legal peace meant, if you pay once, you don't have to pay a second time. That is, it was critical to unlocking compensation for victims who would never have been able to recover otherwise, given the passage of time.

This \$8 billion has gone to one and a half million Jewish and non-Jewish victims of World War II, slave laborers and others. And it was premised on the promise of the United States government to support legal peace, backed by a statement of interest from the U.S. government, in future cases that these settlements were in the foreign policy interests of the United States. To upend this bargain would impair the credibility of the U.S. government in Holocaust negotiations and others.

Now, ICHEIC did cease operating in March of 2007, but the European insurance companies that were part of ICHEIC have voluntarily agreed to continue to review new claims, and new claims have been provided and paid. For example, for German insurance companies alone, they have identified 43 new policies, and \$140,000 has been paid on them. There is now, as we speak, an active claims process for both new insurance claims and previously rejected claims, if new information comes to light, at no cost to the claimant.

I publicly invite any person who believes they have an insurance claim to bring this to our attention, and we in the State Department, through our Holocaust claims office or through the New York State Holocaust Claims Processing Office, so brilliantly led by Anna Rubin, will pursue that claim. We will forward it to the insurance entity. We will make sure they thoroughly research the claim and that they provide us with the results.

This bill, as previous versions, is opposed by six major Jewish groups, by survivor groups, and by the class-action lawyer, Robert Swift—and I have got the scars on my back negotiating with him—who was the class-action lawyer in the Generali settlement. It would upend a negotiated settlement reached through the efforts of the government more than 10 years ago with respected class-action lawyers, and that negotiation was agreed to by these Jewish organizations, by advocates for Holocaust survivors, and by foreign governments as well as the United States.

So this law, whatever its motives might be—and I am sure they are good—would undermine presidential authority in the most profound way, would impugn the credibility of the United States in negotiations, would complicate further efforts, which are ongoing now, to negotiate with Germany and other countries on behalf of Holocaust survivors and their families. We are trying to get best practices done, which I negotiated in June of this year, on real property. It would throw into question whether the word of the executive branch meant anything.

So I urge you, in the strongest terms, to recognize that this claims process outside of court, it was the best way. It is the best way. It remains open for future claims. We will pursue any claims that we hear about to make sure that they are inspected. Please do not take an action to undermine what was \$8 billion worth of compensation premised on legal peace, and that legal peace would be undermined by this bill in the most profound way.

Thank you.

[The prepared statement of Mr. Eizenstat follows:]



PREPARED STATEMENT OF STUART E. EIZENSTAT

**Testimony of  
Stuart E. Eizenstat  
Special Adviser to the Secretary of State for Holocaust Issues  
House of Representatives  
Committee on the Judiciary  
Subcommittee on Commercial and Administrative Law**

**September 22, 2010**

As many of you know, I have devoted a substantial part of my public career to keeping the cause of justice for Holocaust survivors and their families before the world's consciousness going back to the Carter Administration. As the Special Representative of the President and Secretary of State on Holocaust Issues during the Clinton Administration, I engaged in negotiations with Switzerland, Germany, Austria, France, and a number of central and eastern European countries in order to deal with the unfinished business of the Shoah. These negotiations, which covered bank accounts, slave and forced labor, the recovery of Nazi-looted art, the return of communal property, and the payments of thousands of long dormant insurance policies belonging to Holocaust victims and their heirs, ignored for decades after the end of World War II, resulted in the settlement of class action cases and the disbursement of more than \$8 billion in benefits to Jewish victims of the Holocaust and their families as well as to non-Jewish victims of Nazi persecution.

I have by no means been alone in these efforts. Instead, I have always enjoyed bipartisan support from Members and former Members of Congress. Whether Democrats or Republicans controlled the Congress or the White House, I could count on their leaders to support our efforts to achieve a measure of justice for survivors and their heirs.

In this bipartisan spirit, the Obama Administration has given renewed and enhanced attention to doing everything possible to help survivors. It recognizes the urgency of the task as survivors' time grows short. As his stirring remarks at the Days of Remembrance commemoration last year show, President Obama has a deep commitment to this cause. I also know from working with her during the Clinton Administration, and also since then, no one in this country has a deeper commitment to Holocaust justice and a more profound understanding of how to achieve it than Secretary of State Hillary Rodham Clinton.

Just over a year ago Secretary Clinton honored me by naming me head of the U.S. delegation to the Prague Holocaust Era Assets Conference. Of the five

international Holocaust conferences at which I have led the U.S. delegation – the London Gold Conference of 1997, the Washington Conference on Nazi Looted Art in 1998, the Stockholm Conference on Holocaust Education of January 2000, and the Vilnius Conference on Cultural Property of October 2000 – the Prague Conference was the one that covered the most comprehensive set of issues in the most detailed manner. This conference concluded on June 30, 2009 with the issuance of a document called the Terezin Declaration endorsed by the forty-seven nations that participated. For the first time in the history of such conferences, the Terezin Declaration dealt with the social welfare needs of Holocaust survivors and other victims of Nazi persecution. It also covered immovable or real property, Jewish cemeteries, Nazi confiscated and looted art, Judaica and Jewish cultural property, archival materials, and Holocaust education, remembrance, research, and memorial sites.

In June 2010, we negotiated Guidelines and Best Practices for the Restitution and Compensation of Real (Immovable) Property to which over 40 countries have agreed. A new European Shoah Legacy Institute in Terezin has been created to help oversee implementation of these Guidelines and Best Practices, as well as the other commitments in the Terezin Declaration.

As has been the case throughout all of the international negotiations on Holocaust-era issues, U.S. leadership played an essential role in the creation of the Terezin Declaration and the Best Practices and Guidelines. It was yet another reminder, if any more were needed, that everything we have achieved in the past 15 years has depended on one thing – the credibility of the U.S. Government. Other countries have cooperated with us and followed our lead because they knew they could depend upon the United States to stand behind the agreements we negotiated. I believe that, however well intentioned, H.R. 4596 would undermine the credibility of the U.S. Government with the countries with whom we have been dealing on these highly emotional Holocaust-related issues.

Since we commenced our negotiations, companies and countries alike have paid billions of dollars to Holocaust victims and their families. In return they have only sought assurances that they would not be sued further in U.S. courts. The many agreements we reached provided compensation to victims of the Shoah and their families, and to non-Jewish victims of the Nazis, included an understanding that the United States Government would do all it could to provide “legal peace” to them. The U.S. Government has filed Statements of Interest to back up that understanding against additional litigation, which the courts have uniformly accepted as a proper statement of U.S. foreign policy.

The legislation before us, however, threatens to undo all these accomplishments and to end this legal peace. It therefore also threatens to undermine the faith other nations and companies placed in the United States when they agreed to these historic settlements. These views are not unique to me or to the Administration. As I shall discuss more fully later in my testimony, the State Department is not alone in opposing H.R. 4596. Leading Jewish Non-Governmental Organizations, which are also the leading advocates for Holocaust survivors and their families in the United States, oppose this bill as well.

Thousands of companies and numerous nations, some close allies, paid billions of dollars pursuant to the settlements we negotiated, with the full agreement of the class action lawyers, and major Jewish organizations. Were H.R. 4596 enacted, those countries and companies would be open to yet another round of litigation by a new set of lawyers. This is not appropriate. It would not only impugn the credibility of the United States of America, but it would hold out the expectation to survivors of recoveries in court that would have virtually no chance of being realized.

We recognize and we applaud the bill's noble intentions. We oppose it, however, because we fear that H.R. 4596 would, if enacted, replace an existing and successful claims resolution process with open-ended and quite probably fruitless litigation against certain European insurance companies that can be reached by U.S. courts. We also fear that it would reopen claims already settled in U.S. courts or resolved by an international commission created by U.S. state insurance commissioners and Jewish NGOs, and supported by the U.S. government. In other words, this bill would quite likely provide no real benefit to survivors now in their waning years, but instead potentially jeopardize their existing benefits and raise false hopes. I will explain more fully why that is the case, but first let me focus on what has been achieved over the past dozen years for Nazi victims and their heirs through the very negotiated agreements this bill threatens to unravel.

#### **Bipartisan Support for Negotiated Resolution of Holocaust-related Claims**

The last three administrations, Democrat and Republican alike, have worked closely with victims' advocates and their representatives to ensure the implementation of Holocaust claims agreements concluded between 1995 and 2001. These agreements, as I have noted already, have provided more than eight billion dollars in compensation to more than a million and a half survivors of Nazi persecution and their heirs residing all over the world. While no amount of money

can ever truly compensate for Nazi crimes, these payments by governments and companies involved in the Holocaust should not be dismissed out of hand. It was the first time in recorded history that private companies agreed to such compensation. In return for this historic action, they deserve the “legal peace” we negotiated with them to encourage them to make these payments in the first instance.

President Clinton’s Administration achieved these payments largely through a negotiated settlement of lawsuits and negotiations with foreign governments. These negotiations also included victims’ representatives and private companies that had profited from the Shoah. Such agreements meant that the money was paid out much faster -- and to a much larger segment of survivors and heirs -- than would have been the case had a few claimants pursued their claims through litigation in the U.S. Most victims, in fact, would probably not have received anything, for it is unlikely that they would have prevailed in a court of law owing to stricter rules of evidence, to statutes of limitation, and to legal defenses available to the defendants that were mainly governments or companies that could afford lengthy litigation.

The class action lawyers who brought these Holocaust-related suits included some of the toughest, most capable, and most dedicated litigation attorneys in the United States. Recognizing the substantial legal hurdles they faced, they agreed to dismiss their cases in return for substantial settlements. They also accepted only about one percent of the total recovery in legal fees. Should this bill become law, costly litigation will be the result, and everyone – lawyer and claimant alike – will end up the loser.

### **Immediate Post-World War II Efforts to Pay Claims**

Let me explain briefly how European insurers initially handled insurance claims in the period immediately following World War II. In Eastern Europe, communist governments nationalized insurance companies and refused payments to claimants. In other cases, some insurers ignored claims when claimants could not produce adequate documentation, a practice which ignored the uniqueness of the Holocaust. Starting in the 1950s, insurance policies and other assets were compensated on a larger scale by German state compensation programs. However, this effort failed to cover all policies issued to Holocaust victims, in significant part because many insurance companies from other countries wrote policies on persons later killed in the Holocaust. Nevertheless, there were various, if incomplete, efforts by insurers in Western Europe to pay a portion of the claims in the post war period.

### **International Commission on Holocaust Era Insurance Claims (ICHEIC)**

Renewed interest in Holocaust-era claims in the 1990s led to creation of the International Commission on Holocaust Era Insurance Claims, or ICHEIC. This Commission, which was established in 1998 by the National Association of Insurance Commissioners in partnership with a number of European insurance companies and which was headed by former Secretary of State Lawrence Eagleburger, had on its board a broad range of Holocaust advocates. These included representatives from the State of Israel, from Jewish organizations, and from U.S. state insurance regulators. This Commission became the primary vehicle for settling insurance claims.

#### **ICHEIC's Inclusion of Many European Insurance Companies**

ICHEIC enlisted insurance companies from Germany, Switzerland, France, the Netherlands, and Italy as members. These companies bound themselves to its principles and standards, which were designed to help victims and their families overcome decades of obfuscation, delay, and denial by foreign insurance companies.

ICHEIC also reached separate operating agreements with other European insurers through the Sjoa Foundation of the Netherlands, with Belgium's Buysse Commission, and with the National Fund of the Republic of Austria for the Victims of National Socialism. Austrian insurers, using ICHEIC's relaxed standards, established a separate process to pay claims pursuant to a bilateral agreement between the United States and Austria. Thus, ICHEIC's coverage and influence encompassed a substantial portion of the companies that had issued life insurance policies across Europe before World War II. Among them were insurance companies well beyond the judicial reach of the United States.

#### **State Insurance Regulators and Jewish NGOs on ICHEIC's Board**

The state insurance regulators and the representatives of Jewish claims organizations who were also part of ICHEIC were fierce in their pursuit of the interests of the Holocaust victims. They insisted on unfettered access to the archives in 15 relevant countries in order to search for policies. They also insisted on making public more than 500,000 names of Holocaust victims who were possible policyholders.

Pomeroy – Ferras Report

To establish a factual basis for processing claims, ICHEIC commissioned experts to undertake a study on the number and value of life insurance policies issued to Jewish victims. This study, which is called the Pomeroy-Ferras Report,<sup>1</sup> provided solid evidence about the size and type of insurance products issued in each European insurance market prior to World War II. Subcommittee Members may wish to read that report, which is available at [www.icheic.org](http://www.icheic.org).

Since Section Two, the “Findings” section of H.R. 4596, does not cite this important study, please allow me here to list a few of its key points:

- In general, the propensity to buy insurance was higher among Jews than among non-Jews in Europe.
- Residents of Germany, Austria, and the Low Countries had a higher propensity to insure than did those residing in Eastern Europe.
- Even in relatively wealthy Germany, the value of the average life insurance policy issued between 1933 and 1938 in local currency tended to be only about \$300 to \$400 (actual value in Reichsmarks at that time).
- Urban, professional Jews in Germany probably had higher value policies, the average value of which may have been around \$1,200.
- The estimates of the proportion of unpaid policies claimed by survivors and their families immediately following World War II, in the case of Germany, varied from 15.5% to 32.5%.
- The percentage of unpaid insurance policies issued by insurers in Eastern Europe was higher than in Western Europe, but the propensity to insure in Eastern Europe was lower.

The ICHEIC payments process took account of the facts and assessments reported in this study. Its payments reflected the fact that Jews had higher value policies than others. But it is important to bear in mind that a substantial number of the policies belonging to Jewish victims were paid in the immediate post war period.

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<sup>1</sup> See Pomeroy-Ferras Report at <http://www.icheic.org/pdf/Pomeroy-Ferras%20Report.pdf>

ICHEIC's challenge in 1998, then, was to pay not the entirety but the unprocessed *remainder* of these policies – the hardest cases.

#### Claims Friendly Process vs. H.R. 4596

To do this, ICHEIC set up a claims-friendly process. This process encouraged people to file claims with ICHEIC even if they only suspected, but could not prove, that someone in their family was the beneficiary of life insurance policies in effect during the Nazi era. ICHEIC sent these claims to all insurance companies that did business in the country where the policy would have been issued to try and find the policy. To ensure that the companies were correctly processing claims, ICHEIC sent in auditors to confirm that the process was thorough. In addition, at no cost to claimants, ICHEIC then undertook research in archives and government files in an effort to locate evidence of a policy. This was critical as the records of some companies had been destroyed during the war. Thus, ICHEIC's research efforts made it possible for many claimants to obtain payments when they had no information regarding policies covering their relatives. Lenient standards of evidence existed and claims were processed without regard to the kinds of legal defenses, such as Statutes of Limitation, Laches, and Jurisdiction, which would have been available to insurers in U.S. courts. Finally, ICHEIC included many European insurance companies that were well beyond the judicial reach of U.S. courts.

During ICHEIC's nine years of existence, it received roughly 91,000 claims. Only about 31,000 of these applications, however, were able to name a company. This was understandable. Many claimants were very young at the time of the Holocaust and may not have known the details of their relatives' policies. Even if they were adults when they took out a policy, it would be easy to forget the name of the insurer over the intervening six decades. ICHEIC therefore designated applications filed by victims or heirs that failed to name a company as "unnamed claims, a category of 60,000 claims." (Note: Each ICHEIC claim could involve more than one policyholder.)

#### ICHEIC Matches Unnamed Claims With Policies

To address the problem of "unidentifiable claims," ICHEIC organized a major research effort. It worked with both insurance companies and archives in many countries to create a list of more than 500,000 names of possible policyholders, and it published these names on the Internet. The publication was not only useful for claimants in filing claims but assisted in the processing of claims. The information

from the research in archives was available for companies and ICHEIC to use to supplement their records. In this way, ICHEIC could take a claim that had very little information and do the research necessary to transform it into a “matched claim” – one that is linked to a policy issued by a specific insurance company. ICHEIC was thus able to transform 8,000 claims that originally did not name an insurer into claims linked to an actual policy. ICHEIC then paid out nearly \$100 million to the 8,000 who had originally filed an “unnamed claim.” These claimants would have had no chance of success in U.S. courts.

#### ICHEIC’s External Research Process

ICHEIC’s External Research is still available.<sup>2</sup> Anyone reading the report will recognize that the research was superior to anything that a U.S. court could have established and supervised. This is because ICHEIC was seen as an international entity engaged in a cooperative effort with the voluntary participation of European companies. This gave it far better access than litigation would have allowed.

#### Payments to Claimants with Credible Stories

What is more, even if its research failed to find a policy or any documents at all to support claims, ICHEIC’s applicants could at least receive a payment of \$1,000 if they could provide any credible anecdotal evidence. In other words, as long as they told a convincing story, they could get paid despite the absence of any documents supporting the claim. 31,000 claims fell into this category. None of these would have had any realistic chance of success in U.S. courts.

#### Payments to Claimants Holding Policies of Nationalized Companies

ICHEIC also paid some 2,900 claims against defunct insurance companies or companies nationalized under communism immediately after World War II. Such nationalized companies lacked a successor able to pay claims. No one holding such claims would have been successful in a U.S. court proceeding.

#### Summary of Total Payments by ICHEIC

In total, ICHEIC paid out \$300 million on 48,000 claims. ICHEIC also paid out \$169 million for social welfare programs intended to benefit Holocaust survivors

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<sup>2</sup> External Research report is available at the ICHEIC website:  
<http://www.icheic.org/pdf/Research%20Report-0404.pdf>.



whether they were beneficiaries of insurance policies or not. If one excludes the 31,000 claims based purely on anecdotes, 17,000 documented claims totaling \$270 million were paid. This amounts to an average payment of about \$16,000 per claim. Additional information is contained in ICHEIC's final report: "Finding Claimants and Paying Them: The Creation and Working of the International Commission on Holocaust Era Insurance Claims."<sup>3</sup>

### **The Italian Insurer Generali**

The Italian insurance company Generali deserves special mention. It issued life and dowry policies throughout Europe prior to World War II. A founding member of ICHEIC, Generali paid the largest number of claims during ICHEIC's existence and it has since paid additional claims through a voluntary settlement in which, separately from ICHEIC, Generali came to terms with plaintiffs in a class action suit in U.S. courts. According to Generali, it agreed to this settlement *after* the plaintiffs' claims had been dismissed.

Generali has paid out approximately \$135 million in claims via the ICHEIC process (\$100 million was an initial non-refundable contribution to ICHEIC at the time of joining, and the other \$35 million was committed as part of the class settlement). Generali reports that between 3,500 and 4,000 claimants benefited from the \$135 million in payouts. Generali also reports that an additional \$9 million was paid to some 700 heirs pursuant to a second part of the class action settlement, which enabled claimants who missed the ICHEIC claims deadline to nevertheless have their claims processed. Furthermore, Generali also reports that it contributed another \$48 million to other foundations handling insurance claims, including foundations in Israel, Germany, Austria and the Netherlands. It has also voluntarily paid another \$3 million to claimants outside the ICHEIC process and the class settlement. In total, together with settlements of individual lawsuits, Generali has paid out more than \$200 million to thousands of claimants through voluntary settlements.

### **Austrian General Settlement Fund**

Austria merits mention as well. Under the terms of a bilateral agreement with the United States, Austria created the Austrian General Settlement Fund for assets

<sup>3</sup> <http://www.icheic.org/pdf/ICHEIC%20Legacy%20Document.pdf>

confiscated from Jews following the Nazi takeover of that country. Over \$200 million was set aside to settle asset claims. In addition, this Fund uses ICHEIC's relaxed standards of evidence when it reviews insurance claims, and it has thus far paid out \$23.2 million of the \$25 million it has allocated for such claims. Four thousand claimants have received an average individual payment of \$5,800.

### **Swiss Banks**

Only two Swiss insurers, Winterthur and Zurich, participated in ICHEIC. Other Swiss insurers, however, were part of the Swiss bank settlement, which has allocated \$50 million to pay insurance claims. Despite an extensive research and outreach effort, the Swiss bank claims process has been able to locate and approve only a little more than 100 insurance claims to date. But the sums paid out are not insubstantial, for this process has allocated or distributed nearly \$1.3 million so far. The Swiss companies in ICHEIC have also paid slightly more than 50 claims, totaling slightly less than one million dollars. The numbers of insurance claims and the payments generated by both claims processes may seem small, but they are nevertheless consistent with the findings of ICHEIC's external research.

### **Legal Peace**

In our negotiations in the wake of class action suits against German companies in the year 2000, the German defendants insisted on "legal peace" — that is, on the dismissal of current suits and on protection against future suits. Negotiating the terms for legal peace was excruciatingly difficult. Ultimately, the class action lawyers, Jewish organizations representing Holocaust survivors, German industry, and the German government agreed that the U.S. government, in return for contributions from German companies, would file a Statement of Interest in any such future suits. These Statements of Interest make clear that it is in the foreign policy interests of the United States that current and future cases be dismissed. As indicated, these Statements of Interest have been issued by the U.S. and upheld by courts.

These negotiations resulted in a settlement worth ten billion DM (\$5 billion). Hundreds of German companies provided half of this amount, and the German government the other half. Included among the German companies that contributed were all German insurers, even those founded after 1945, the vast majority of which have no business interest in the United States. I negotiated the portion of this settlement passed on to ICHEIC — \$281 million — directly with former Secretary of State Eagleburger, the head of ICHEIC, and agreed to by all

parties and stakeholders. Several Eastern European governments, including Poland, were deeply involved in the negotiations as well.

Similarly, in our two agreements with Austria, which totaled some \$800 million and which also included an insurance component, contributions came both from the Austrian government and from the Austrian private sector, with the same understanding on “legal peace.” Indeed, the German model formed the basis of the Austrian agreement.

If this bill were to be enacted, it would interfere with the idea of “legal peace” established in these settlements, thereby upsetting the very basis for the payment of billions of dollars to Holocaust survivors and their heirs. It would also impugn and effectively revoke commitments to file Statements of Interest made by the Executive Branch of the U. S. Government to foreign entities. If this should happen, the ability of the U.S. Government to be a credible negotiating partner on other Holocaust-related issues thereafter would be impaired. Our current efforts, under the June 2010 Guidelines and Best Practices, to encourage the countries of Central and Eastern Europe to restitute or compensate for confiscation of real (immovable) property, and to use the imputed value of heirless Jewish property to provide social welfare benefits to needy Holocaust survivors, would become immeasurably more difficult.

#### **Section 2(9) and Section 3(b) of H.R. 4596**

H.R. 4596 states that “companies holding Holocaust-era insurance policies continue to withhold names of owners and beneficiaries of thousand of insurance policies sold to Jewish customers prior to World War II” (Section 2(9)). This contention, which fails to acknowledge ICHEIC’s requirement that independent auditors confirm that the search of company files was thorough, is arguable. The bill also asserts that ICHEIC paid only a small fraction of the thousands of insurance policies issued by European insurers. Of course not all insurance policies issued by European insurers could be paid. In part, this is due to the tragic fact that entire families were exterminated, leaving no beneficiary. In part, it is also due to the fact that living heirs had no information about possible insurance policies owned by their loved one who perished in the Holocaust. But, no better process could have been developed through litigation to help potential claimants identify appropriate insurance policies.

The available evidence provided by ICHEIC’s experts, who used country-by-country data on premiums paid to determine the total value of all policies issued in

European countries, stands in contrast to assertion in Section 2 (9) of H.R. 4596, cited above. As I noted earlier, the empirically-based Pomeroy-Ferras report revealed that the total life insurance market, particularly in Eastern Europe, was much smaller than many of ICHEIC's critics suggest. These critics have failed to put forth reliable historical evidence for their estimates of the size of Europe's pre-World War II insurance market.

Section 3 (b) of this bill would permit states to pass laws which would impose on insurers the requirement ... "to disclose information regarding any covered policy...." But, as I have described above, ICHEIC companies and cooperating partners have already effectively provided the disclosure demanded in this bill to claimants. Moreover, courts have frowned on states interjecting themselves into what are U.S. Government foreign policy decisions to support "legal peace" in return for billions of dollars in compensation. This is an area which has been in the purview of the U.S. Government, not states. Indeed, it was for this reason that U.S. state Insurance commissioners, who were and remain deeply committed to justice for Holocaust victims, took a leadership role in creating ICHEIC in the first instance as a national and international body to deal with foreign insurance companies, and also cooperated closely with the State Department in doing so.

#### **Class Action Counsel Robert Swift on Generali Audits**

The Generali insurance company provides a case in point regarding the thoroughness of recent audits of ICHEIC companies. The class action counsel in the Generali settlement, working under the supervision of a U.S. district court judge, gained unfettered access to Generali's files to determine independently that the claims process in the class action settlement with Generali was being effectively and fairly conducted. Last March, the same class action counsel in the Generali settlement, Robert A. Swift, wrote to House Foreign Affairs Committee Chairman Howard Berman about what he had found in those files. In this letter he noted that he had reviewed Generali's archival information and could attest that he had obtained from Generali whatever documents he had requested. Moreover, he said, he had performed an audit of 300 randomly selected claims processed by Generali and had found no material discrepancies.

Mr. Swift also stated that, while he is an ardent supporter of compensation for Holocaust survivors, he does not believe H.R. 4596 is helpful. Instead, he regards H.R. 4596 as an attempt to "rescind a Class action release which is court approved." If this bill is enacted, Mr. Swift noted, it could subject the United States to a "taking" claim. That is, if enacted, H.R. 4596 would deprive the

insurance companies of the benefits of a class action settlement for which they may be able to sue the United States.

The practical effect of this bill, then, would be to encourage lawyers to file lawsuits that they know could not succeed in court on the merits but might force insurers into another round of endless negotiations. This bill, while placing new and onerous demands on insurers and providing further remuneration for lawyers, is thus doomed to disappoint claimants who think they have valid but unpaid policies hidden away someplace, and that if they could be found would permit them to recover under strict rules of evidence and in face of legal defenses that would almost certainly be asserted.

#### **Post-ICHEIC Claims Processing**

When considering this bill, it is also important to remember that, though ICHEIC ceased operations in March 2007, the European insurance companies that were part of ICHEIC have voluntarily agreed to continue to review any new Holocaust-related insurance claim under the same relaxed evidentiary standards ICHEIC used. Now, even if ICHEIC had previously reviewed and rejected the claim, the insurance companies will reopen a case if a claimant brings new evidence to their attention. Moreover, ever since ICHEIC's closure, the Holocaust Claims Processing Office (HCPO) in New York has been sending claims to European insurance companies. The HCPO does this in the belief that these insurers are handling such claims fairly.

All ICHEIC participating insurance companies, which include Generali, have agreed to this post-ICHEIC process. The German Insurance Association does not even require that an individual identify the name of the insurance company. Instead, it forwards such an unnamed claim to several dozen relevant members for review.

Thus, there is already an active process for handling both new insurance claims and previously rejected claims when new information comes to light. This is being done at no cost to the claimant. It is also being monitored by the State Department's Office of Holocaust Issues. We publicly invite any person who believes that they have a Holocaust-era insurance claim to bring this to our attention. Either directly or through the New York State Holocaust Claims Processing Office, we will forward the claim to the appropriate insurance entity and insist that they thoroughly research the claim and provide us with the results of their research. We will also continue to work with the Holocaust Claims

Processing Office in New York to enlist the support of that office as a victims' advocate.

### **Opposition to Legislation from Major Jewish Organizations**

In May 2008 virtually all major Jewish organizations strongly opposed a bill, H.R. 1746, that was similar to this one. They submitted letters expressing their opposition to a committee hearing chaired by Senator Bill Nelson. This year numerous major Jewish organizations have once again written to Congress to express opposition to this bill. In a June 17, 2010 letter to Chairman Conyers, six major Jewish organizations stated that the proposed legislation "effectively repudiates and reopens previous agreements, which undermines negotiations with Germany and others." The signatories to this letter also stated: "We do not want to trade away the real and immediate benefits to so many survivors provided by such negotiations for the elusive promise of redress that H.R. 4596 may bring to very few individuals and their lawyers." Finally, this letter also argues that H.R. 4596, would show "disregard" for our "country's role with respect to future agreements which are still needed, but also raises questions about the ability of the U.S. to abide by its promises." I agree wholeheartedly with these sentiments. I could not have expressed them better or more clearly myself.

### **Problems with Continued Litigation**

As these organizations rightly point out, and as I have just argued as well, if this bill is passed, it may end voluntary cooperation on Holocaust-era insurance claims and foster a new round of potentially endless, fruitless, and costly litigation. Such litigation would surely face nearly insurmountable legal obstacles. If a claimant could not succeed when ICHEIC, which processed claims under very relaxed evidentiary standards, was in operation, or now, when ICHEIC insurers use the same relaxed standards, what prospect would such a claimant have in a new lawsuit where he or she would face much stricter rules of evidence and procedure?

### **Bill's Impact on the Authority of the President**

One final point: The United States has long believed that Holocaust-era insurance claims should be resolved through negotiation and cooperation with relevant parties. This approach has successfully encouraged European governments and companies to provide funds through voluntary settlements in preference to litigation and coercive sanctions. This approach has also allowed the State

Department to act as a facilitator and to assist parties in reaching negotiated settlements of class action lawsuits.

It has therefore long been the policy of several administrations to favor alternate dispute resolution mechanisms in Holocaust claims cases. Past and present administrations, Democratic and Republican alike, have as a result decided that ICHEIC "... should be regarded as the *exclusive forum and remedy* for claims within its purview."<sup>4</sup> Experience has proven the wisdom of this policy. We have obtained greater benefits more quickly for the greatest number of victims and heirs through alternate dispute resolution mechanisms than they have been able to achieve through litigation. What is more, as the United States Supreme Court explained in its *Garamendi* decision, enforcement of state laws inconsistent with the claims settlement agreements negotiated by the President "... would mean that the President could not wield the full 'coercive power of the national economy' as a tool of diplomacy in negotiating a process for settling claims ... ." Such state laws would also "... 'compromise[s] the very capacity of the President to speak for the Nation with one voice in dealing with other governments' to resolve claims against European companies arising out of World War II."<sup>5</sup>

## **CONCLUSION**

For all these reasons, I hope that this subcommittee rejects H.R. 4596. I also urge Holocaust survivors or heirs of Holocaust survivors and other victims of Nazi persecution and their attorneys to submit their claims instead to the State Department Office of Holocaust Issues and to the New York State Holocaust Claims Processing Office. I assure you that we in the State Department will work with this office to ensure that such claims are forwarded to the appropriate insurance companies or parties and we will insist that they thoroughly research these claims and report their results to us. In other words, we will do everything we can to ensure, in a much more effective way than the litigation recommended by H. R. 4596 could do, that claims are properly considered, ICHEIC's liberal rules are followed, and full payments are made where merited. We will be the advocate of American claimants in this process, and we will certainly keep the Congress fully informed of the progress of these claims.

<sup>4</sup> (Note: Quotation from an October 27, 2009 filing with the U.S. Court of Appeals for the Second Circuit by Assistant Attorney General Tony West and State Department Legal Adviser Harold Hongju Koh. See *In re Assicurazioni Generali S.P.A.*, Nos. 05-5612-cv, 05-5310-cv.)

<sup>5</sup> (See *American Ins. Assn. V. Garamendi*, U.S. 396 (2003))

Thank you.

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ORGANIZATIONS WRITING TO OPPOSE HR 4596 IN JUNE 2010

Anti-Defamation League, the American Jewish Committee, B'nai B'rith International, the Conference on Jewish Material Claims Against Germany, the World Jewish Congress, and the World Jewish Restitution Organization .

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Mr. COHEN. Thank you, Mr. Ambassador, and I would noticed that you are, in fact, a resident, or a denizen, of D.C. now, but your roots are certainly in Atlanta. You never lose those. And I would comment——

Mr. EIZENSTAT. Haven't lost my accent, although I have changed my residence.



Mr. COHEN. Understood, and I am sure you are proud of your Atlanta roots, though.

Chairman Berman wrote a letter pretty much in support of the position you are taking, and then we have heard from the Administration, as well.

Our second witness is Mr. Samuel Dubbin. Mr. Dubbin is a principal in the law firm of Dubbin & Kravetz, former shareholder in the law firm of Greenberg Traurig, and a partner with Steel Hector & Davis. Concentrations in this practice here is administrative, regulatory and commercial litigation.

Dubbin & Kravetz currently represent Holocaust survivors and heirs of Holocaust victims and litigation against European insurance companies that have failed to pay the proceeds of insurance policies issued prior to World War II in Federal court litigation and for recovery of other assets, as well.

He has testified on the issue of insurance policies that were sold to Holocaust victims but never before the U.S. House of Representatives Financial Services Committee. And he has testified before the U.S. Senate Foreign Relations Committee.

Mr. Dubbin served from 1993 to 1996 as an official in the United States Department of Justice and Transportation. He was special assistant to Attorney General Reno, a graduate of Coral Gables High School, and deputy assistant attorney general for policy development in the Department of Justice, and later served as chief counsel of the National Highway Traffic Safety Administration in the Department of Transportation. I guess was that when Jim Hall was there, or was it earlier? Okay. Thank you. Would you please begin your testimony?

**TESTIMONY OF SAMUEL J. DUBBIN, P.A.,  
DUBBIN & KRAVETZ, LLP**

Mr. DUBBIN. [Off Mike] Is that better? Can you hear me? Am I audible here? Thank you very much. I want to thank the Committee for holding this hearing. I represent Holocaust survivors, a large number of them. They don't all necessarily have insurance claims. In fact, many may not. I also represent some family members of survivors.

But survivors I represent are elected leaders of Holocaust survivor groups from around the country. They sent the Committee a letter expressing their support for the legislation and their pointed opposition to the arguments that have been made by institutions and organizations who do not represent survivors and who certainly don't represent them in their individual capacity.

They are American citizens, and today, their rights as American citizens have been stripped away not because Congress passed a law with full open disclosure and debate, but because the executive branch, in letters to the court and in exaggerating what was agreed to in 2000, has essentially said that a private offshore corporation that was funded by the insurance companies, and controlled by the insurance companies, that excluded claimants and that rejected congressional oversight, even though Congress had mandated the production of ICHEIC-related records, because the executive branch has said that we believe this private chamber should be the exclusive remedy, that today, Holocaust survivors are second-class

citizens in the U.S. legal system. They have asked me to come speak on their behalf in support of this legislation.

There are three fundamental problems with the status quo. The first is the general notion of executive preemption. It is a constitutional and public policy disaster that has allowed these U.S. citizens, Holocaust survivors, including U.S. veterans and war veterans, to be stripped of their legal rights.

The second is the instrument of this stripping, the ICHEIC. It was a fundamentally flawed process. And I can show you the stacks of newspaper articles by those people who, if they weren't part of ICHEIC, they weren't flown around the world in business class and staying in five-star hotels to participate, they were simply trying to help people.

And what they proved, and what a large body of evidence shows, was that ICHEIC operated in secret. ICHEIC did not produce the policy names that were supposed to be produced. It was substantially incomplete.

Survivors were not represented by anybody they authorized. And at the end of the day, it paid 3 percent. ICHEIC paid \$250 million in policy claims. Of the—today's numbers, \$20 billion that were sold by these companies.

So the second element to this is, if you were to design a system today to be an alternate remedy for any citizen, like in a Worker's Comp program, would you construct it so that the defendants paid for it and controlled it and were the only ones allowed to participate, and that the claimants didn't have the right of representation, and it was not overseen by any governmental authority? I don't think you would.

But that is the law today. That is what the opponents of the legislation are saying. That is what Holocaust survivors should be stuck with.

The third is the problematic expansion of the limited benefits the U.S. ever agreed to into the broad immunity now enjoyed by insurance companies. The legal peace argument is a misrepresentation of what was agreed to by President Clinton.

President—the Germans, in their negotiations, asked for immunity from litigation. President Clinton said no. It was understood that the President did not have the power to immunize these insurance companies. They only promised that, if a German company was sued, it would file a statement of interest saying that the litigation should be dismissed on other available legal grounds, but categorically that the participation in ICHEIC did not, by itself, constitute grounds for dismissal.

But today, the legal peace that the insurance companies enjoy is far broader than was ever agreed to, and the executive branch of the United States has literally misrepresented what was agreed to in the service of the insurance companies. They have said in court that it is U.S. policy that any litigation against any ICHEIC company violates U.S. foreign policy, and that such litigation is contrary to U.S. public policy. That is not what was agreed to.

So the bedrock argument being made by Mr. Eizenstat and others is a misrepresentation of what was agreed to. They are asking you, as Congress, to ratify not only what you didn't agree to in 2000, but what President Clinton didn't agree to in 2000.

And when Mr. Eizenstat says that the underlying premise of legal peace is that the companies should not have to pay twice, we agree with that. If this bill passes, nobody is going to pay twice. If they paid through ICHEIC, that claim is dead. But if they are holding one of the 97 percent, over \$19 billion worth of policies that were not paid through ICHEIC, the survivors deserve, and their heirs deserve to have those claims paid. So that is something that needs to be carefully understood.

The other problem with the arguments being asserted is that the survivors never agreed. I mean, talk about Jewish organizations participating in a commission, no survivor authorized the Claims Conference or the American Jewish Committee to sit at a table and decide what they are entitled to as individual American citizens. That is anathema to the American way.

And so, the organizations that are now opposing the legislation were part of the commission. They also—and I have to say this, and it is uncomfortable for me because I am Jewish, and I have received awards from most of the organizations who are opposing the survivors today—but you have to look deeply. What is their standing to oppose survivor's interests? They claim to have been actively fighting for survivors' rights all those years. The record doesn't support it. But worse yet—

Mr. COHEN. Let me suggest that I will ask you a question where you can respond to this, but that the red light is on, and we have our rules, and we can't go over.

Mr. DUBBIN. All right. Can I just finish that one thought there?

Mr. COHEN. If it is a quick way to finish it.

Mr. DUBBIN. Well, if the organizations, like the ADL, has taken money from Generali, and the American Jewish Committee has taken, and is taking money from Allianz today, you need to examine that. You need to understand their motives for opposing the rights of individual American citizens who are Holocaust survivors from enjoying their equal rights.

And I do have some comments to some of the other questions that were made, so I do hope you ask me some questions.

[The prepared statement of Mr. Dubbin follows:]

PREPARED STATEMENT OF SAMUEL J. DUBBIN\*

**Statement of Samuel J. Dubbin**

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**Testimony before the United States House of  
Representatives**

**Committee on the Judiciary**

**Subcommittee on Commercial and Administrative  
Law**

**Hearing on HR 4596: The Holocaust Insurance  
Accountability Act of 2010**

**September 22, 2010**

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\*Mr. Dubbin submitted eleven exhibits as attachments to his prepared statement. Due to the voluminous size of the attachments, the material is not being printed with this statement but is on file with the Subcommittee.

Statement of Samuel J. Dubbin  
Dubbin & Kravetz, LLP  
Before the House of Representatives Committee on the Judiciary, Subcommittee  
on Commercial and Administrative Law

September 22, 2010

My name is Samuel J. Dubbin. I would like to thank Judiciary Committee Chairman Conyers and Subcommittee Chairman Cohen, and all the members of the Subcommittee, for holding this hearing on the vital and very urgent problems facing Holocaust survivors and heirs with unpaid insurance policies. The bottom line from my clients' perspective, and thousands of other survivors and families they represent, is that Congressional action to restore survivors' rights is long overdue.

For the past decade I have had the privilege of representing Holocaust survivors and family members in attempting to recover assets looted by a variety of governments and global businesses. In the eyes of the survivors and heirs I represent, the restitution enterprise has mostly failed. In their eyes, the interests of victims and families have been given the lowest priority, with the interests of governments, international corporations, and institutions having conflicting agendas taking precedence. I am here today because they are crying out for justice, and for a fair shake from the American political system.

Today, the focus of my testimony will be on the problem of unpaid insurance policies that were purchased by Jews in Europe prior to World War II but never paid to the insureds or their rightful heirs. To their shock and dismay, Holocaust survivors and the heirs of Holocaust victims today are the only American citizens who are categorically precluded from the U.S. courts to recover compensation for insurance policies indisputably bought by their family members but never paid. Holocaust survivors, and

their families, are profoundly disappointed that Congress has not acted to stand up for their rights.

It is unfortunate that many of the survivors who I will speak about today were not physically able to travel to Washington for this hearing, but I implore you on their behalf to think of them and them alone in your deliberations. They are entitled to every consideration, and you have the power to restore their full rights and erase the trauma of second class citizenship imposed by the status quo.

#### I. Background Representing Holocaust Survivors and Heirs

I have practiced law in Miami, Florida since 1982, having clerked for a federal judge after passing the Florida bar in 1981. Between 1993 and 1996, I served in the Clinton Administration as Special Assistant to Attorney General Janet Reno and Deputy Assistant Attorney General for Policy Development in the Department of Justice, and as Chief Counsel to the National Highway Safety Administration (NHTSA) in the U.S. Department of Transportation. After I returned to private practice in Miami, a group of survivors in South Florida (the South Florida Holocaust Survivors Coalition) approached me because they feared that they would be excluded from a meaningful role in the emerging public negotiations, lawsuits, and settlements over “Holocaust asset restitution.”

They explained that for decades, Holocaust survivors had been excluded from major decisions affecting their rights and welfare, as non-survivor organizations purporting to speak on their behalf controlled these processes without the consent of the victims themselves. Meanwhile, tens of thousands of survivors in their 70s, 80s, and 90s were suffering without adequate home and health care, nutrition, shelter, dental care, and

other essentials of life. This shocked me, Mr. Chairman, because one article of faith throughout my adult life has been that victims of the Holocaust occupy a hallowed place in the conscience of every civilized person and institution, and deserve every consideration possible in the recognition of the unique horror they endured. In practice, their experience has been quite the opposite.

In the year 2000, the South Florida Survivor Coalition leaders joined with elected survivor leaders from throughout the United States who had also reached the conclusion that it was past time for survivors to speak and act for themselves. They formed the Holocaust Survivors Foundation USA, Inc. (HSF), which has become the leading grass-roots voice for survivors' rights to obtain a full and transparent accounting of assets looted during the Holocaust, to recover assets traceable to living survivors and heirs whenever possible, and to ensure that all survivors in need receive priority funding from restitution proceeds which are truly "heirless." I have been the organization's legal counsel since its inception. HSF's activities have been widely reported over the last 8 years in national Jewish media such as the *Jewish Telegraphic Agency*, the *New York Jewish Week*, the *Forward*, as well as in national media such as the *New York Times*, the *Wall Street Journal*, the *Los Angeles Times*, the *Miami Herald*, *South Florida Sun Sentinel*, *Palm Beach Post*, and Associated Press. HSF leaders have testified in Congress on this very subject several times in the past few years. More information about HSF's activities and goals can be found at its web site, [www.hsf-usa.org](http://www.hsf-usa.org).

## II. Summary of House Legislation – HR 4596

HR 4596 is essential to require the insurers doing business in the American market to open their records, publish the names of policyholders from the pre-war era,

and allow survivors and heirs to bring actions in court if the companies refuse to settle on reasonable terms. It also provides a 10 year window for such suits since most survivors and heirs have no knowledge of the fact that these companies sold their parents or grandparents or aunts or uncles insurance before WWII.

Let me be clear about what is at stake. It is money, yes, because the insurers profited outrageously from the Holocaust and turned their backs on those who trusted the companies' supposed integrity. But this law is also about the truth. And the current system, the status quo that prevents survivors from getting a full accounting about family insurance policies in U.S. courts, has permitted the companies to hide behind the secrecy of ICHEIC, an unregulated and extra-legal process, chartered in Switzerland and headquartered in London, and funded and controlled by the insurers, which made decisions about Holocaust survivors' insurance rights with absolutely no governmental or judicial oversight.

The few times Congress tried to examine ICHEIC's processes or operations, ICHEIC refused to cooperate – and got away with it. ICHEIC officials refused to answer serious questions in Congressional hearings, and refused to provide information required by statute. Now, its defenders say this regime should be sealed with the imprimatur of the U.S. Congress as an acceptable framework for the rights of the victims of history's greatest crime. The survivors I represent urge you in the most heartfelt but determined way not to allow the bureaucratic, political, and economic forces opposing HR 4596 to substitute for a decent respect for the financial and human rights of Holocaust survivors. Survivors deserve better.

Since my last testimony in May 2008, before the Senate Foreign Relations



Committee, I have made several disturbing discoveries about the efforts of the Executive Branch – under Democratic and Republican Presidents – to expand the protections extended to the insurance industry far beyond, and contrary to what was agreed to by President Clinton with respect to executive agreements with Germany and Austria, and even reversing President Clinton’s policy with respect to Generali, a company from Italy which has no agreement with the United States. Today, contrary to what President Clinton agreed to, the executive branch has baldly stated that U.S. policy supports dismissal of survivors’ and heirs’ suits against insurance companies, including Generali, *solely* because they participated in ICHEIC. In so doing, the executive branch not only misrepresented the policy of the United States government, but supported an astonishing and radical expansion of executive authority beyond anything allowed by the Supreme Court, and even beyond the expansive view of executive power represented by *ALA v. Garamendi*.

It is long past time for Congress to assert itself and reverse the Executive Branch’s power grab and the courts’ current acquiescence in this radical expansion of executive power that has eviscerated Congress’s authority over domestic policy by the mere use of the words “foreign policy,” and terribly eroded states’ authority to govern their citizens in areas of traditional state policy such as contracts, torts, and property laws.

The missing element in the survivors’ battle for justice against recalcitrant insurers has been Congress. Despite numerous hearings documenting ICHEIC’s inconsistencies and shortcomings, for reasons that are impossible for my clients to fathom, Congress has been silent. This is Congress’s last opportunity to fulfill what should be a simple and straightforward duty to give every survivor and heir a chance to

get to the truth about their families' policies, uninhibited by any political or institutional machinations or agendas. To be sure, with so many Holocaust survivors facing their last years, many living in crushing poverty, any further delay by Congress will be fatal to thousands of survivors who are depending on you for action today.

HR 4596 provides a legally enforceable remedy that survivors and family members have right to control themselves. It places survivors where they would have been in 1998 after state laws passed to allow insurance consumers to pursue their traditional remedies against the companies that profited from the Holocaust at the expense of the families of the victims. Without legislative relief, hundreds of thousands of unpaid policies worth over \$20 billion today (if not more) sold to Jews before WWII would evaporate – and be inherited by multinational insurers such as Allianz, Munich Re, AXA, Winterthur, Swiss Re, Swiss Life, Zurich, Generali, and others.

The survivors' point of view with respect to the restitution processes of the past decade are summarized in a January 2009 letter from the Holocaust Survivors Foundation USA to President Barak Obama, in which they wrote:

Despite headlines in the media that “Holocaust restitution” has been successful, this is simply not the case. The reality is that specific property restitution for individuals has been largely unsuccessful and disappointing. Only a fraction of the funds actually looted was recovered by individual owners or heirs, and only a small portion of funds paid out for “humanitarian purposes” have trickled down to meet the pressing needs of living Holocaust survivors.

The unbearable fact that while so many survivors are suffering today, huge corporations that profited from the Holocaust not only compete successfully in the “global marketplace,” but in the U.S. Congressional lobbying sweepstakes. There is an urgent need for a comprehensive solution to the issues of restitution and justice for survivors who are still living. The only thing that is clear is that the status quo has

not delivered either material restitution or moral closure for Holocaust victims.

According to data compiled by the Jewish Federation system in 2004, there are 174,000 survivors or “Nazi victims” living in the United States. Over 40,000 survivors, 25% of the U.S. survivor population, live at or below the official U.S. poverty level, and another 40,000 have incomes so low (up to twice the official poverty level) that they are considered poor given the cost of living in their communities. Despite some safety nets, far too many U.S. Holocaust survivors cannot afford adequate nutrition, shelter, health care, dental care, emergency services, eyeglasses, in-home care, and the like. This does not even begin to address the problems unique to aging Holocaust survivors, such as finding health-care professionals who can deal with the long-term effects of starvation, beatings, disease, extreme injury to teeth due to malnutrition and other deprivations, and other traumas that many endured in the ghettos and concentration camps.

The HSF leadership proposed a four-point program to advance survivors’ rights, interests, and welfare. Unfortunately, the Obama Administration has not responded to the survivors’ post-inauguration letter, and the Administration has not, after nearly two years in office, made any concrete improvement to survivors’ legal status or quality of life.

### III. ICHEIC and Insurance Litigation

The need for legislation is underscored by the fact that the courts have held, contrary to any precedent, that the “policy” of the federal executive supporting ICHEIC as the “exclusive remedy” for claims by survivors, beneficiaries, and heirs, categorically prohibits Holocaust survivors, U.S. citizens including veterans and combat veterans, from going to U.S. courts to sue insurance companies who defaulted on simple contractual obligations. Over the past decade, I have represented several survivors and heirs and beneficiaries with claims against various European insurance companies, and also assisted several survivors and heirs over the years who attempted to navigate the ICHEIC

system.<sup>1</sup> In that role, I have observed first hand many of the inconsistencies, irregularities, and failures voiced by survivors and reported in the media. But ICHEIC's performance is really immaterial – even if it was more “successful” it is simply contrary to American values and the Constitution to deny survivors and family members equal rights enjoyed by every other American.

Based on my involvement and the public record, I will describe the evolution of the need for HR 4596.

In the case of Thomas Weiss, M.D., Generali denied for years that it sold his father (Paul Philip Weiss) any policies. In June 2000, he brought a lawsuit against Generali in state court in Miami. Within months of the suit being filed, Generali finally disclosed the existence of *one* policy owned by Mr. Weiss. Mr. Weiss's name later appeared more times on the ICHEIC web site, along with the names of many of his brothers and sisters who died in the Holocaust. When Dr. Weiss attempted to secure information about those names, Generali refused unless *he could give the birth dates of his father's brothers and sisters – all of whom were killed in the Holocaust* before Dr. Weiss was even born. Other survivors and heirs in my experience were given similar impossible hurdles to overcome in the quest for family policy information from ICHEIC and other companies, including Allianz.

Dr. Weiss's case was removed to Federal Court and consolidated in New York

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<sup>1</sup> In February 1998, the House of Representatives Financial Services Committee held its first hearing on the subject of unpaid Holocaust victims' insurance policies. One of my clients, Dr. Thomas Weiss, testified about the policies his father purchased before the war from Assicurazioni Generali, S.p.A. which remain unpaid to this day. I also represented Holocaust survivor Arthur Falk in litigation against Winterthur Insurance Company, a Swiss entity. Mr. Falk testified before the House of Representatives Committee on Government Operations in November 2001. The case settled.

with the other putative “insurance class action cases.” These included cases brought against Generali, Allianz, AXA, RAS, Victoria, Basler, Zurich, Winterthur, and other European-based insurers.<sup>2</sup>

In 2001, Generali moved to dismiss the case in favor of mandatory resolution by ICHEIC. The District Court, Judge Michael Mukasey, rejected Generali’s argument in part because he found ICHEIC was “clearly unsatisfactory:”

Defendants have moved to dismiss in favor of a private, nongovernmental forum that they both created and control, the continued viability of which is uncertain. Because of these shortcomings, ICHEIC cannot be considered an adequate alternative forum.

*Id.* at 355. Among the Court’s findings was that ICHEIC was “manifestly inadequate because it lacks sufficient independence and permanence.” *Id.* at 356. It held:

ICHEIC is entirely a creature of the six founding insurance companies that formed the Commission, two of which are defendants in this case; it is in a sense the company store. . . . The concern that defendants could use their financial leverage to influence the ICHEIC process is not merely theoretical. . . . ICHEIC’s decision-making processes are and can be controlled by the defendants in this case. . . .

*Id.* at 356-57.

However, in 2003, the United States Supreme Court held in *American Insurance Association, Inc., v. Garamendi*, 539 U.S. 396 (2003) that even though the U.S.-German executive agreement did not expressly preempt state law, the agreement’s requirements and the executive branch’s general “policy” that Holocaust survivors’ claims should be

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<sup>2</sup> After the German Foundation Agreement, in 2001, the cases against the German insurers were voluntarily dismissed. They were not settled on a class-wide basis, but were dismissed without prejudice to the rights of all others who were not named plaintiffs. This is significant because, if the Agreement was meant to terminate survivors’ and heirs’ rights to sue German companies, the cases would have had to been settled under Federal Rule of Civil Procedure 23 with notice to every potential class member and an opportunity to opt out. This wasn’t done.

resolved on a non-adversarial basis preempted the State of California's right to require insurance companies to produce more records than ICHEIC required. After that decision, Judge Mukasey reversed himself, and in 2004 held that because of *Garamendi*, U.S. foreign policy mandated that he dismiss the Generali cases, even though there was no executive agreement between the United States and Italy, and no opposition from the U.S. nor Italian governments.

Notably, both the Supreme Court in *Garamendi*, and Judge Mukasey, observed that *Congress had not addressed disclosure and restitution of Holocaust victims' insurance policies*, leaving the door wide open for Congressional action today.

All Plaintiffs, including Dr. Weiss, about 20 other individuals, and the putative class action plaintiffs, appealed Judge Mukasey's decision. On August 25, 2006, the "class action" lawyers entered into a settlement agreement with Generali. The settlement in effect adopts the results of ICHEIC as binding on those who tried and failed in the process, basically a settlement with minimal or no benefits to the class members.

I was asked by several survivors including Floridians Jack Rubin, Alex Moskovic, and David and Irene Mermelstein, Fred Taucher of Seattle, Washington, and Hans Lindenbaum of Israel, who had attempted unsuccessfully to navigate ICHEIC's labyrinths, to lodge objections to the settlement. Unfortunately, the District Court stated that it had a very limited role and was not at liberty to consider ICHEIC's flaws in deciding whether to approve the settlement.<sup>3</sup> The Court approved the deal, saying that given Judge Mukasey's dismissal of the cases on "foreign policy" grounds, the class

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<sup>3</sup> Judge Mukasey retired from the federal bench while the appeal was pending, and review of the class settlement was assigned to U.S. District Judge George Daniels.

members were better off with “something,” however paltry and unpredictable it might be. About 250 class survivors and heirs opted out of the settlement, and my clients appealed the decision.<sup>4</sup> And, unfortunately, the Second Circuit affirmed the settlement as being within the trial court’s discretion, and the Supreme Court denied review.

In other words, despite clear evidence of ICHEIC’s unfairness and ineffectiveness, the federal courts held that based on Judge Mukasey’s expansive theory of executive preemption, survivors and heirs with claims were stuck with ICHEIC even if they never agreed to be bound by it. This included thousands of survivors and heirs with documented claims against Generali that were denied under the notorious “negative evidence rule,” described below in more detail.

When the opt-out plaintiffs’ appeals were argued in the Second Circuit in June 2008, Generali admitted that it had asked the Clinton Administration on several occasions to file statements of interest supporting them in survivors’ lawsuits, similar to what the U.S. agreed to provide German companies under the executive agreement, and the Clinton Administration *refused* because there was no executive agreement between the U.S. and Italy, and therefore no U.S. foreign policy interest. However, in August 2008, the Second Circuit wrote a letter to Secretary of State Condoleezza Rice asking whether litigation against Generali posed a conflict with U.S. foreign policy even though there was no executive agreement with Italy.

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<sup>4</sup> On October 2, 2007, the Second Circuit Court of Appeals agreed with one of the arguments advanced by the objecting survivors, and reversed the class settlement because the parties failed to provide individual notice to everyone who had applied to ICHEIC and whose name and addresses were available to Generali. The Court ordered a new notice program and new deadlines for responses, a fairness hearing, and a new briefing schedule. Judge Daniels approved the settlement again for the same reasons as before on January 7, 2008, and my clients appealed that decision on the merits.

In October 2008, the Department of Justice sent the Second Circuit a letter stating that despite the lack of any Executive Agreement between the United States and Italy, Generali was the beneficiary of a “Federal Executive Policy” that the ICHEIC commission should be the exclusive forum for Holocaust survivors’ insurance claims. According to DOJ, Generali was entitled to “foreign policy” protection solely because it participated in ICHEIC, and despite the absence of any executive agreement, and despite the fact that the Italian government did not object to the litigation.

The DOJ stated, completely contrary to what it had said in 2000 and in numerous letters to concerned members of Congress and in Court briefs:

it would be in the foreign policy interests of the United States that ICHEIC be regarded as the exclusive forum for resolution of insurance claims against companies like Generali that participated in the ICHEIC process. (page 1);

it is contrary to settled United States foreign policy for plaintiffs’ claims to be adjudicated in the courts of the United States” (page 9-10); and

it would be in the foreign policy interests of the United States that such claims not be pursued through the courts. (page 11).

Letter Brief of U.S. Department of Justice, October 29, 2008.

After President Obama took office, the Court sent another letter to the State and Justice Departments, asking the same question. Surprisingly, the Obama DOJ followed the Bush DOJ and sent a letter to the court declaring that survivors’ litigation against Generali conflicted with U.S. foreign policy, despite the lack of any treaty or other agreement, and ignoring President Clinton’s contrary position.

After the Obama DOJ’s submission, the Second Circuit affirmed the dismissal of the plaintiffs’ claims based on “executive preemption.” The court held that “executive foreign policy” favoring resolution of victims’ claims by this commission preempted



these U.S. citizens' rights under state law to sue Generali for breach of contract and other common law claims, even though the "policy" was not formalized in, much less required to be asserted, in any Executive Agreement or Treaty. The Second Circuit relied on the *Garamendi* decision and the DOJ's two briefs. *Weiss v. Assicurazioni Generali, S.p.A.*, 592 F.3d 113 (2d Cir. 2010).<sup>5</sup>

#### IV. Background of Jewish People's Insurance Policies and Insurers' Conduct

The survivors I represent are only asking Congress to restore the rights they always assumed they had and that no legislative body or even executive branch action purported to deny them – the right to have their injuries redressed in the courts of this country. They do not regard ICHEIC as an evil in of itself nor do they intend any disrespect for the intentions of many who participated there. However, given that ICHEIC was the foundation on which their rights have been eviscerated, it is necessary to discuss ICHEIC's creation and operation. That unhappy story is rooted in the tragic events intertwined with the Holocaust, the greatest crime in human history.

##### A. History

In the inter-war years, insurance was one of the few means available for people to protect their families, both in western and eastern Europe. Most banking systems were not safe (e.g. no FDIC insurance) and many currencies were unstable. People could and did however purchase insurance from domestic branches or subsidiaries of global

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<sup>5</sup> Dr. Weiss has filed a Petition for Certiorari in the U.S. Supreme Court to review the Second Circuit's decision, with University of California, Irvine, Law School Dean Erwin Chemerinsky as the lead counsel. Three amicus briefs have been submitted to the Court in support of the certiorari petition, by (1) a bipartisan group of members of Congress, including many co-sponsors of HR 4596, (2) the California State Senate, and (3) a distinguished group of law professors in the fields of constitutional law and U.S. foreign relations law.

insurers such as Allianz, AXA, Swiss Life, Winterthur, Generali, RAS, Victoria, Munich Re, Swiss Re, Zurich, Basler Leben, and other insurers still in business today (or whose portfolios have been acquired by extant companies). Frequently, these policies were purchased in US Dollar denominations.

One of the key selling points of many companies was the contractual right to receive policy proceeds “wherever the customer requested” in the world. There is ample evidence that the companies emphasized this feature in their sales to Jews who were increasingly living under the dark clouds of Nazism in Europe. For example, the policies of Victoria of Berlin provided: “From the first day that the insurance becomes effective, the insured person has the right to change professions and residence and he may go to any other part of the world. Such changes will not affect the validity of the policy in the least, which will continue to be in effect as before.” Evidence of similar provisions in other companies’ policies is abundant in the record that has developed, limited though that is considering ICHEIC’s secrecy.<sup>6</sup>

When the Nazis came to power in Germany in 1933, they carried out a comprehensive scheme to identify and confiscate the property owned by the Jewish people. Known as the Aryanization of Jewish property, this included the forced redemption of insurance policies with short-rating which yielded much needed cash to a Depression-era Nazi machine, and proceeds such as accumulated cash values and prepaid premiums. Jews were required to report to the Nazi authorities their property and

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<sup>6</sup> As another example, Generali’s marketing brochures and policies highlighted the availability and value of overseas assets – including assets in America – that would ensure the customers’ ability to collect their benefits outside of Czechoslovakia if they so requested. *Buxbaum v. Assicurazioni Generali*, 33 N.Y.S.2d 496 (N.Y. Sup. Ct. 1942); *Kaplan v. Assicurazioni Generali*, 34 N.Y.S. 2d 115 (N.Y. Sup. Ct. 1942).

personal valuables, including insurance policies. Coupled with the Germans' comprehensive census data identifying residents according to their Jewish identity, including having up to one Jewish grandparent, and laws that prevented the pursuit of livelihood, these human beings were targeted by the Nazis for death and despoliation.

This information pointed the way for the Nazi regime to use the Gestapo to target Jews they could now locate by address for forced "assignment" of cash and other assets such as insurance policies. The plaintiffs who sued the twenty or so major European insurance companies in the late 1990s all alleged that the insurers and their affiliates (including reinsurers) participated in and benefited financially from the confiscation of Jewish-owned insurance policies ("short-rating"). These allegations have not been denied in any pleading, and much has been written and published to corroborate this point. For example, historian Gerald Feldman wrote in *Allianz and the German Insurance Business, 1933-1945*, Cambridge University Press, 2001:

The companies licensed to operate in the Protectorate were also affected by the particularly rigorous and systematic seizure of Jewish insurance assets, so that by July 1942 the Prague Gestapo was able to report 54.4 million Czech crowns in confiscated repurchase values, the bulk of which came from the portfolios of Generali (20.1 million), Victoria (13.8 million), RAS (5.9 million), and Star-Verischerungsanstalt (4.6 million).

Feldman, at 356. Professor Feldman's book and other studies and records clearly document how Allianz and other German, Swiss, Austrian, and Italian insurance companies willingly participated in confiscation activities throughout Europe.

After World War II, as Holocaust survivors and their families struggled to reconstruct their lives, insurers refused to honor the policies they had issued to insure

property the Nazis seized and the lives of those who perished before firing squads and in Holocaust death camps. The companies stymied their former customers with evasions and denials such as demanding original policy documents, demanding death certificates, denying the existence of policies, denying that they had records of policies from that period, claiming that their assets were confiscated or nationalized by post-war communist governments obviating its obligations to Jewish Holocaust victims, and other bogus or legally deficient denials that frustrated Holocaust survivors and their families for decades.<sup>7</sup>

In 2002, the Government of Switzerland published the Bergier Report, also known as the Independent Commission of Experts Switzerland, Second World War (ICE) which addressed several areas of Swiss corporate and governmental complicity in and profiteering from the murder and plunder of Europe's Jews. The Bergier Report on insurance is disturbing but not surprising in its description of the Swiss insurers' dishonesty toward and disrespect for its Jewish customers. For example, despite the fact that Swiss insurers had nine (9) percent of the German market, "[i]n 1950 the

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<sup>7</sup> There is evidence that one or more companies (or a number of its affiliates and subsidiaries) was a mutual company at the time of the war. If so, then in the demutualization process the policyholders, who ICHEIC would pay a scant fraction of their "insurance values," would be denied much greater sums owed in that the policyholders would be the owners of the company.

RAS, Generali's sister company, also Trieste based pre-war was a vigorous worldwide competitor to Generali. RAS was, like Generali, a Jewish founded and owned company is now part of German giant Allianz-Munich Re. Kurt Schmitt, Allianz's CEO from the late 1920's and Hitler's first choice for Minister of Economics, saw the two Jewish owned insurance giants as bereft of cover after the collapse of the Hapsburg Empire in 1918. The obvious question is how Allianz managed to acquire the RAS shares? Among the utter failures of the current system is the lack of any accounting for how Allianz obtained control after the Jewish founding families shareholders, board of directors and policyholders were despoiled and exterminated. Allianz should show the provenance of the shares they now control.

Association of Swiss Life Insurance Companies reported that *its members could not find a single policy whose owner had been killed as a result of the machinations of the Nazi regime* so that their entitlement to claim under the policy had become dormant.”

Bergier Report, at 465. (Emphasis supplied). The Report also showed:

Immediately after the war, on 27 June 1945, representatives of the four Swiss companies which had issued life insurance policies in the Reich discussed in Zurich how they might avoid claims from Jewish emigrants for restitution of such confiscated policies. A large part of the discussion was characterized by a decidedly aggressive tone. In a subsequent memorandum, one of the companies concerned, Basler Leben, stated: “Jewish insurance holders aimed to compensate their despoliation by the Third Reich by despoliating Switzerland of its national wealth.”

Bergier Report, at 460.

Public denials of insurers’ Holocaust profiteering have continued even in the supposed recent environment of “truth and transparency.” In 1998, Allianz AG Board Member Herbert Hansmayer sought Congress’s sympathy for the company’s alleged devastation during and after WWII:

Like the rest of the German insurance industry, life insurance companies, such as our German life insurance subsidiary Allianz Lebensversicherungs AG were bankrupt or near bankrupt at the end of the war after having to invest in government bonds that became worthless when Germany was defeated. Allianz Leben also held properties that were lost or destroyed in war-ravaged Germany.

Transcript of February 12, 1998 Hearing before the House of Representatives Committee on Financial Services.

But Mr. Hansmayer’s ploy was contradicted months later in a detailed article in the *Wall Street Journal* in November 1999, which explained that Allianz’s immense current power in the German financial world originated from its rich cash reserves *available at the end of WWII*:

Allianz picked up the core of its stock holdings after World War II. At a time when German companies were desperate for capital, Allianz was one of the few sources of cash to rebuild the bombed-out country. As German corporations regained momentum and became global players, Allianz continued to invest and maintain its influence in boardrooms.

Steinmetz and Raghavan, "Allianz Eclipses Deutsche Bank As Germany's Premier Power," *The Wall Street Journal*, November 1, 1999.

In the 1990s, after high-profile disclosures and revelations about European corporate and governmental theft of Jewish peoples' assets from the Holocaust, survivors began speaking publicly about family insurance policies. State insurance regulators started examining the conduct of insurers in the U.S. market who sold policies to European Jews before World War II. Congressional committees held hearings as well. While a small number of victims and heirs actually had scraps of paper describing a facet of an insurance relationship, most recalled statements by their parents that the family had insurance in case of disaster, or recounted their memories of agents who came calling regularly to collect a few Pengos or Zloty or Koruna as premiums on family policies. Others described post-war recollections by parents who survived Auschwitz only to be "beaten" by insurers out of large sums of money.

#### B. ICHEIC Formed in 1998 by Insurance Companies

In 1998 several States, including Florida and New York, passed legislation requiring European insurers to publish names of unpaid policies from the Holocaust era and to pay claimants based on liberal standards of proof, and extending the statute of limitations for the filing of claims. Congress was poised to pass similar legislation when insurers and foreign governments persuaded certain non-survivor Jewish organizations and state insurance commissioners to create an "international commission" to supposedly

standardize the process and avoid "costly, protracted litigation." The International Commission for Holocaust Era Insurance Claims (ICHEIC) consisted of six companies, three "Jewish organizations" (the Claims Conference, the WJRO, and the State of Israel), and three state regulators. Former Secretary of State Lawrence Eagleburger was appointed Chairman.

Mr. Eagleburger has admitted that ICHEIC was chartered under Swiss law and headquartered in London to avoid the reach of U.S. courts' subpoena powers. It was funded entirely by the insurance companies, with decisions were to be made "by consensus," i.e. no decision was made without insurance company acquiescence. The Chairman would break ties when necessary. Congress stayed its hand from enacting legislation.

Five years later, after several scandals were reported in the *New York Times*, *Los Angeles Times*, and *Baltimore Sun*, the *Economist*, and other media, Chairman Eagleburger admitted to the House of Representatives Committee on Government Reform (September 2003) that the ICHEIC had spent far more in administrative expenses (including first class travel) than it paid to claimants. Survivors appeared at this and other hearings and told horror stories of multi-year waits for responses from ICHEIC, denials without any explanation other than "no match found;" demands for information that no survivors or legal heirs could be expected to know; and denials by companies even in the face of documentary evidence that policies existed. Nevertheless, Congress again failed to act directly to address the companies' conduct or to assist survivors at that time.

However, in 2003, Congress did mandate, in Section 704 of the 2003 Foreign Relations Reauthorization Act, that ICHEIC provide reports on its operations and the companies' performance to the U.S. State Department. In spite of this Congressional mandate, *ICHEIC refused to supply the required reports every year*. The State Department cited a letter from Chairman Eagleburger rejecting Congress's authority over ICHEIC, *but that letter has never been made public*. Remarkably, State took no further action.<sup>8</sup> Neither did Congress.

ICHEIC completed its "mission" in March 2007 and the results are catastrophic. There were 875,000 estimated life insurance and annuity policies outstanding valued at \$600 million in 1938 owned by Jews. And while western countries conducted limited restitution of policies for extremely low values, by 2007 the amount that was unpaid from policies in force in 1938 was *conservatively* estimated to be worth \$18 billion. This estimate, by economist Sidney Zabludoff, is conservative because it uses a 30-year U.S. bond yield to bring get to current value, whereas insurance companies also invest in equities and real estate. *See* Testimony of Sidney J. Zabludoff before the U.S. House of Representatives Financial Services Committee, February 7, 2008, and before the House of Representatives Foreign Affairs Committee Subcommittee on Europe, October 3, 2007.<sup>9</sup>

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<sup>8</sup> According to the State Department reports: "The Department requested additional information from ICHEIC in an effort to meet the reporting requirements of Section 704(a)(3)-(7). ICHEIC Chairman Lawrence Eagleburger responded that he would not provide the Department of State any information regarding ICHEIC's undertakings."

<sup>9</sup> Using the same conservative 30 year bond rate, the same policies represent unpaid obligations of \$20.5 billion in 2010 dollars.



When ICHEIC closed its doors in March 2007, it had paid fewer than 14,000 of the 800,000 pre-WWII life/annuity/endowment policies estimated to be owned by European Jews in 1938 and *unpaid* when ICHEIC began.<sup>10</sup> The total amount paid through ICHEIC on policies was \$250 million, which was less than three percent (3%) of the minimum conservative estimate of \$18 billion total in outstanding values at the time.<sup>11</sup>

ICHEIC also paid \$31 million in \$1,000 “humanitarian payments” and allocated another \$165 million for “humanitarian projects” through the Claims Conference (including many unrelated to survivors’ needs). So, even if one adds all of ICHEIC’s claimed payments, totaling about \$450 million, ICHEIC generated less than 5% of the money stolen from European Jews’ life insurance funds.

Meanwhile, ICHEIC’s cost of operations exceeded \$100 million, though the exact cost has not to my knowledge been widely published. To this day, Congress has not examined ICHEIC’s operations despite this terrible track record. ICHEIC operated in virtual secrecy for nine years, disclosing only the barest minimum of information about its processes. Today’s challenge for Congress is not to focus on ICHEIC, which has completed its mission. However, a review of ICHEIC’s performance is helpful for the record because today, this private, off-shore “commission” funded and controlled by the

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<sup>10</sup> Today, ICHEIC and its supporters take credit for having “paid 48,000 claims,” to inflate the body’s alleged success. This total includes 34,000 checks of \$1000 for “humanitarian payments.” But survivors and heirs do not regard the 1,000 payments as being for policies; neither did ICHEIC during its tenure. Survivors considered the \$1000 checks transparent attempts at pacification. See Testimony of Jack Rubin, U.S. Senate Committee on Foreign Affairs, May 6, 2008.

<sup>11</sup> Indiana Business School Professor Emeritus and insurance consumer expert Joseph Belth estimated the value of unpaid life (only) policies in excess of \$300 billion in 2008. September 11, 2008 Letter from Samuel J. Dubbin to Sharon Swingle, at 12, note 14.

insurance industry, which operated in secret and paid a tiny fraction of Jews' policies is now considered the legally binding "alternative forum" *for Holocaust survivors and beneficiaries and heirs of Holocaust victims*, supplanting their rights as American citizens of access to U.S. courts for vindication of their state law rights. Congress can no longer tolerate such an outcome.

### C. ICHEIC's Track Record

Perhaps the most succinct summary of ICHEIC's failures was written by Yisroel Schulman, President of the New York Legal Assistance Group (NYLAG), a public interest law firm that represented many survivors who attempted to navigate ICHEIC. When ICHEIC feted its conclusion in 2007 with a champagne reception and the Chairman said it had "achieved its goal of bringing a small measure of justice to those who have been denied it for so long," Mr. Schulman had a different perspective:

As a lawyer who has closely worked with ICHEIC claimants, I sadly disagree. For nine years, ICHEIC failed the very people it was created to serve.

Yisroel Schulman, "Holocaust Era Claims: Mission Not Accomplished," *The New York Jewish Week*, May 4, 2007.<sup>12</sup>

#### 1. ICHEIC's Disclosure of Policy Holder Names Was Slow and Incomplete.

ICHEIC was supposed to begin with a comprehensive dissemination of names of policy holders in order to inform survivors and family members about the possibility of an unpaid policy in their family, but only a fraction of policies, including only 10% from

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<sup>12</sup> ICHEIC participants were required to sign "confidentiality agreements." Since Florida's Insurance Commissioner was an ICHEIC member, I was able to obtain early ICHEIC minutes through Florida's Public Records Law, section 119.07, Florida Statutes (2002). There came a time that the Chairman stopped distributing certain materials because the "confidentiality agreements" were being circumvented.

Eastern Europe, were published. Most were published in mid-late 2003, after the filing deadline had been extended twice and shortly before the final deadline.

This failure undermined one of ICHEIC's basic tenets, i.e. that almost all Holocaust survivors and the heirs of Holocaust victims would have to depend on the insurance companies to publish policy holder information before they would have any idea that they might have a possible claim. On September 16, 2003, the Committee on Government Reform of the U.S. House of Representatives held a hearing concerning the efficacy of the ICHEIC and the impact of the Supreme Court's *Garamendi* decision. Several members of the Committee, and the survivors and survivors' advocates, who testified, expressed their dismay with ICHEIC. *See* Treaster, "Holocaust Insurance Effort is Costing More Than It Wins," *The New York Times*, September 16, 2003, Exhibit 11. ("Lawrence Eagleburger . . . said today that his organization had spent 60 percent more for operations than it had persuaded insurers to pay in claims. . . . Independent Holocaust experts asserted at the hearing that the commission had been outmaneuvered by the insurers.").

Ranking Committee Member Henry A. Waxman remarked:

ICHEIC is supposed to be a public institution performing a public service, yet it has operated largely under a veil of secrecy without any accountability to its claimants or to the public. Even basic ICHEIC statistics have not been made available on a regular basis and information about ICHEIC's administrative and operational expenses have been kept under lock and key. There is no evidence of systematic changes that will guarantee that claims are being handled by ICHEIC in a timely way, with adequate follow up.

Even worse, many of the insurance companies remain recalcitrant and unaccountable. ICHEIC statistics show that claims are being rejected at a rate of 5:1. . . . The

Generali Trust Fund, an Italian company, has frequently denied claims generated from the ICHEIC website, or matched by ICHEIC internally, without even providing an explanation that would help claimants determine whether it would be appropriate to appeal.

Statement of Henry A. Waxman, House Government Affairs Committee, September 16, 2003.

Mr. Waxman continued with a critique of the failure of the ICHEIC to publicize names of policy holders from the areas of Europe in which large numbers of Jews lived and owned businesses:

Look at a chart of Jewish population distribution throughout Europe before the Holocaust and look at the chart of the names that have been published through ICHEIC for each country. Germany makes up most of the names released on ICHEIC's website: nearly 400,000 policies identified in a country that had 585,000 Jews. But look at Poland, where 3 million Jews lived but a mere 11,225 policyholders have been listed, or Hungary, where barely 9,155 policyholder names have been identified out of a pre-war Jewish population exceeding 400,000. In Romania where close to 1 million Jews lived, only 79 policyholders have been identified. These countries were the cradle of Jewish civilization in Europe. Clearly, these numbers demonstrate that claimants are far from having a complete list.

Statement of Congressman Henry Waxman, Committee on Government Reform, September 16, 2003.

It is true that in mid-2003, five years after ICHEIC was created, three years after the German-U.S. Executive Agreement, and after two extensions of the published filing deadlines for ICHEIC claims, an additional 360,000 names were added to the ICHEIC website from Germany, and in late 2003 approximately 30,000 more names of Generali customers were published. However, these were published several *years* after the

vigorous publicity that had occurred fully three years earlier, and after most who had been interested had simply become frustrated and disgusted. In October 2004, the Washington State Insurance Commissioner wrote:

The deadline for filing claims was December 31, 2003. Despite the terms of the MOU (Memorandum of Understanding), up until the very end of the claims filing period the companies continued to resist releasing and having the names of their policyholders published, in some cases citing European data protection laws. By failing and/or refusing to provide potential claimants with the information they often needed to file initial claims, the companies succeeded in limiting the number of claims and their resultant potential liability. Had the companies released the number of policyholder names that could and should have been published over the entire ICHEIC claims filing period, it is likely the number of claims would have been significantly higher than the present 79,732.

In the 110<sup>th</sup> Congress, the German companies and the GDV sought leniency from proposed legislation based on their publication of 360,000 names requires close scrutiny. This plea is undermined by their inexplicable *three-year delay* in reaching an agreement with ICHEIC and producing the names it possessed. The U.S.-German Agreement was made in principle in December 1999 and formalized in July 2000. Yet the German companies haggled and fought over minute details for their participation in ICHEIC (under separate rules than other countries) and no agreement was reached with ICHEIC until October 2002. They did not publish the 360,000 names they claim represent the universe of possible Jewish policies until April 2003. By then, as the Washington Insurance Commissioner noted, virtually no one was paying attention and the final claim deadline was imminent.

2. Insurers did not handle claims speedily or apply relaxed standards of proof.

Several of the legislation's opponents argue that the "nonadversarial" ICHEIC process, which avoided the necessity of "costly, prolonged litigation," was superior as a way for survivors to obtain redress of their claims against the culpable insurers. For example, Ambassador Kennedy stated:

ICHEIC dealt with these issues by adopting relaxed standards of proof and doing the claimants' research for them, but no such relaxed standards will be available in court. Litigation is also, of course, time-consuming and costly, and this legislation would not ensure that any claims are resolved within the lifetimes of the survivors.

Kennedy Financial Services Testimony, February 7, 2008, at 5.

However, that argument, with ICHEIC taking nine years to complete its work and recovering only a small fraction (3%) of the victims' losses, would seem to falter under its own weight. Rather than speedy and effective, ICHEIC was slow, bureaucratic, and seriously defective, as has been well-documented in the public record.

The alleged "relaxed standards of proof" were largely ignored. Reports cite a multitude of denials by companies without providing the information in company files necessary to allow the claimants or the ICHEIC "auditors" to determine whether companies applied relaxed standards of proof, failure to provide claimants with any documents traced in their investigations, and other denials in violation of ICHEIC published rules.<sup>13</sup>

One notorious ICHEIC policy – the "negative evidence rule" -- allowed Generali to deny claims by survivors and heirs with documented policies if Generali *said* they

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<sup>13</sup> These include analyses by Lord Archer on behalf of the ICHEIC Executive Management Committee in 2003, the Washington State Insurance Commissioner in 2004 (3-5, 24, 32-33, 39, and 48-57), various news reports, and the amicus curiae submissions of the New York Legal Assistance Group (NYLAG) and ICHEIC Arbitrator Albert Lewis.

were not in the company's 1936 ledger. Generali denied claims on that basis but asserted that it did not have any records to document the payment, lapse, or surrender of victims' policies. Despite the ICHEIC "rule" placing the burden on companies to prove that a documented policy was not payable, ICHEIC accepted Generali's position, and placed the burden on claimants to disprove Generali's defenses.

Instead of "relaxed standards," ICHEIC allowed Generali to impose a far *more difficult* burden of proof than claimants would have to face in most state litigation where the insurer has the burden of proving its defenses once a policy is established.<sup>14</sup> As NYLAG's Schulman wrote: "ICHEIC's decision to allow the use of negative evidence belies the claim . . . that the organization's principal purpose was to find claimants and pay them."<sup>15</sup>

In addition, the Generali Trust Fund (GTF), which handled half of all Generali claims, was dismissed for non-performance. According to NYLAG's President Schulman:

[I]n late October 2004, the commission terminated its relationship with the [Generali Trust Fund], citing GTF's gross incompetence. Despite acknowledging GTF's sub-par performance, *ICHEIC refused to review any of the fund's final decisions, thereby denying claimants a fair decision-making process*.<sup>16</sup>

So, even though the body that handled half of Generali's claims was dismissed for non-performance, there was not even an effort to correct those errors.

<sup>14</sup> See, e.g., *Pan American Bank v. Glinski*, 584 So.2d 52 (Fla. 1<sup>st</sup> DCA 1991); *Viuiker v. Allstate Ins. Co.*, 70 A.D.2d 295, 420 N.Y.S.2d 926 (N.Y. App. 1979); *Sanchez v. Maryland Cas. Co.*, 67 A.D.2d 681, 412 N.Y.S.2d 173 (N.Y. App. 1979).

<sup>15</sup> Yisroel Schulman, "Holocaust Era Claims: Mission Not Accomplished," *The New York Jewish Week*, May 4, 2007.

<sup>16</sup> *Id.*

### 3. Survivors and Heirs Were Not Represented On ICHEIC

Amazingly, while insurers were voting members (with controlling power) of ICHEIC, claimants and their representatives were excluded. While many state regulators worked hard to protect claimants' interests, the lack of actual, accountable and legitimate claimant representation was a fatal flaw of ICHEIC. One measure of the stacked deck is seen in the "Alpha List" of ICHEIC participants. Each meeting was attended by dozens of insurance company executives, lawyers, lobbyists, and public relations specialists. Yet no chosen representatives or attorneys of survivors, heirs, or claimants were allowed to attend meetings, much less participate in policy-setting decisions. How can Congress consider such a forum to be a proper basis on which to deny Holocaust survivors their constitutional rights?

### 4. Officials and Policies Were Biased Against Claimants

After ICHEIC closed, and after reports surfaced about its dismal record, former New York State Insurance Superintendent and ICHEIC Arbitrator Albert Lewis disclosed that ICHEIC officials pressed him and other appellate arbitrators to rule *against* survivors even when they had credible claims, if the *survivors* could not produce *documentary* proof of a policy. He wrote:

In my experience as an arbitrator I witnessed bias against the claimants by ICHEIC's London office and especially as manifested by the administrator, Ms. Katrina Oakley. She demanded that ICHEIC arbitrators apply an erroneous and phantom burden of proof rule in deciding appeals, a rule that would force ICHEIC's arbitrators to deny an otherwise valid claim.

*See* Stewart Ain, "Phantom Rule May Have Limited Holocaust-Era Awards to Claimants, The New York Jewish Week, June 29, 2007.



Mr. Lewis also provided evidence that the “phantom rule” was adopted and applied by several of the appellate arbitrators even though ICHEIC published “rules” were supposed to be more favorable toward claimants. Amicus Brief of Albert Lewis in Appeal No. 07-1380, *In re Assicurazioni Generali, S.p.A. Holocaust Insurance Litigation*, at 6-8.

Examples of Survivors’ Claims Denied by Insurers and ICHEIC.

Jack Rubin. Jack Rubin was born in Vari, Czechoslovakia, which later became Hungary. The family home and his father’s general store had a sign stating the building and premises were insured by “Generali Moldavia.” In April 1944, at the age of 14, Jack and his entire family were forced from their home and taken to the Beregsasztz Ghetto, and then deported to Auschwitz and other Nazi death camps. His parents perished, but he survived. When he returned, the family home and business were destroyed and no family papers remained.

In 2000, Mr. Rubin filed two claims with ICHEIC. He named his parents Rosa Rosenbaum-Rubin and Ferencz Rubin, with their years of birth. He mentioned the “Generali Moldavia” sign, and even gave the name of the family’s insurance agent, Joseph Schwartz, who “did not survive the Holocaust.”

The Generali Trust Fund acknowledged that Generali Moldavia was a property insurance subsidiary of “the Generali Company in Hungary.” However, it denied any payment in the absence of a document *from Mr. Rubin proving the insurance*. It stated that “the archives of the Generali company did not contain the water copies of the policies issued by subsidiaries.” The ICHEIC Appellate Arbitrator upheld Generali’s denial based solely on the company’s representation.

Neither ICHEIC nor the Arbitrator requested, much less demanded, any actual evidence from Generali's records, such as information on common customers between Moldavia Generali and the parent company or any of its life subsidiaries. The Arbitrator didn't ask Generali if it had an agent named "Mr. Schwartz" in the region where Mr. Rubin's family lived, nor did he examine files on agents. In court, Mr. Rubin's lawyer would have the right to obtain discovery and try to make these connections.

A recent discovery casts further doubt on ICHEIC's superficial acceptance that Assicurazioni Generali, S.p.A. and Generali Moldavia were separate. The photograph, attached as an exhibit to this submission (and copied on the next page), shows the Generali building in Prague during the years that Mr. Rubin's father would have purchased his policies. As is clear from the marquee, Assicurazioni Generali, S.p.A. and Moldavia Generali occupied the same building in Prague. This connection was either not known by the Arbitrator, or not pursued. In either case, the process provided no oversight or even curiosity.<sup>17</sup>

Contrary to accepted wisdom, it was not ICHEIC's function to question insurers' denials. It served as a mail drop for accepting claims and dispatching insurers' responses. That is why survivors and heirs need access to courts to get discovery, rules the insurers would be required to follow, and a fair hearing where the claimants control their own claims.

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<sup>17</sup> ICHEIC famously promoted the idea that claimants did not need lawyers. Jack Rubin did not have legal counsel at the time he filed his ICHEIC claim or appeal.



Herbert Karliner. Herbert Karliner now lives in Miami, Florida. But he remembers Kristallnacht as if it were yesterday. He was a small child that day when he awoke to the news that his father's store and most other Jewish-owned businesses were set on fire. Within hours, the Gestapo arrived and took his father, Joseph Karliner, to Buchenwald. Though his father returned, his family was fated to sail on the SS St. Louis that was turned away from the shores of Miami Beach in 1939. After the St. Louis returned Europe, Joseph Karliner and most his family were killed in the Holocaust. Only Herb and his brother Walter survived.

Before he died, Joseph Karliner had told his sons about a life insurance policy that he bought from Allianz "in case something happened." When Herb and Walter approached Allianz after WWII, the company said his policy had been paid out to an "unknown person." When Herb Karliner applied to ICHEIC in 2000, Allianz said the policy had been paid to the beneficiary. This closed the case under ICHEIC rules.

Years later, Mr. Karliner managed to obtain the "repurchase" document. It was dated Nov. 9, 1938 -- Kristallnacht. If either Allianz or ICHEIC had given him the document as they were required to do under ICHEIC rules, Herb could have informed them that *his father surely did not stop at the Allianz office on his way to Buchenwald to cash in his life insurance policy that day.*

In addition, Herb Karliner asked for information about several other Karliner relatives posted on the ICHEIC web site. Allianz admitted that several of the named individuals had been sold Allianz policies, but refused to give him any information unless

*he could provide their dates of birth.* Since Herb was a 9 years old when WWII began, he had no conceivable way of knowing the birthdates of adult relatives who died in the Holocaust. However, Allianz was fully within its rights under ICHEIC rules to deny Herb Karliner the information about insured relatives for whom he and his brother were the likely heirs.

Like Herb Karliner many other survivors and heirs in my experience were given similar impossible hurdles to overcome in the quest for family policy information from ICHEIC and other companies, including Generali, Allianz, and many others.

Jack Brauns. When Jack Brauns was born in Lithuania in 1930, his father bought a \$2,000 endowment policy from Assicurazioni Generali, S.p.A. to pay for his education at age 18. Unfortunately, his adolescence involved four years in Nazi death camps before he was liberated from Dachau. After the war he moved to Rome to live with relatives and go to school. His parents miraculously also survived, and went back to Lithuania, where they were able to recover *the original policy*. Jack took the original policy to the Generali office in Rome to redeem the company's promise to help fund his education, but Generali rejected his claim.

Jack Brauns managed to complete his medical education without his Generali money and practiced medicine in Los Angeles for 50 years. When ICHEIC began, though he no longer "needed" the money, he applied to collect on his Generali policy. Even though the policy is clearly denominated in "U.S. Dollars," Generali denied payment on the ground that the policy was denominated in "lits" and "lats" which were supposedly valueless. This simply was untrue. Generali denied the claim, then later offered "a few thousand dollars" which Dr. Brauns rejected. Even under the ICHEIC

valuation system (conservative as it was), a \$2000 policy would have been worth at least \$70,000 in the year 2001.

David David. David David was a resident of Milwaukee, Wisconsin, who was born in the area of Poland that is now the Ukraine. His great uncle, Aron Sanel Schapira, his maternal grandmother's brother, ran a business and Mr. David believed it likely that he had insurance to protect both his business and his family.

When the area where he grew up became safe for travel by Jews, Mr. David went there. Through a person he knew in that area, Mr. David learned that his great uncle kept several valuables stored in the walls of the house where he had lived, a common practice for that time and place. The house was still standing and occupied when Mr. David visited and so, Mr. David asked his acquaintance to retrieve his great uncle's items. They found among the items a life insurance policy that Mr. Schapira had purchased in 1920 from Assicurazioni Generali, S.p.A. The terms of the policy provide for the payment of benefits to the bearer of the policy.

Mr. David tried for years to collect from Generali, to recover the due after the catastrophe suffered by his family. His contacts with Generali proved futile. Mr. David died in 2004; his children are the only known surviving members of this family, with great parts of the family killed in the Holocaust.

Mr. David filed a claim with ICHEIC on March 20, 2001. Notwithstanding ICHEIC's rules to respond within ninety (90) days, ICHEIC response was dated December 22, 2006 offering \$1,000.00. Generali also responded to him by letter dated May 25, 2005 and denied the claim because it claimed the policy left its portfolio prior to 1936, what is now known as the "negative evidence rule."

Suzanne Marshak. Ms. Marshak, of Chicago, now 81 years old, is a Holocaust survivor from Paris, France. When ICHEIC started, she filled out forms naming the relatives that she remembered to be relatively well-to-do, including her uncle Albert Bleich who was a prominent and wealthy physician. Generali responded with a letter admitting that it had sold her uncle one policy in 1921 worth 50,000 Hungarian crowns. Generali denied payment, claiming the policy “lapsed before the Holocaust,” but refused to give her any proof. ICHEIC allowed this – now known as the “negative evidence rule.”

George Curtis. George Curtis (Kertesz) was born in Kalocsa, Hungary, in 1914. His father Sandor Kertesz operated a successful wholesale business supplying all the general stores in the city, “Kertesz Sandor A.G.” Mr. Curtis’s parents were deported to camps in Austria in 1944; they were fortunate to survive and return to Hungary. Mr. Curtis himself was captured in 1943 by the Russians and was a POW in Siberia before returning to Hungary in 1948. His father died in Hungary in 1953 and his mother came to the United States in the mid-1970s and died here.

Mr. Curtis applied to ICHEIC and received a copy of an insurance policy purchased by his father from “Triesti Altalanos Biztosito Tarsulat (Assicurazioni Generali),” Policy No. 52603, in 1926, for the face amount of “Dollars 2,000 – ch. New York.” The policy was to mature in 15 years. Premiums were payable at the rate of “33.58 Dollar New York.”

However, the Generali Trust Fund denied payment on the ground that “Policy Nr. 52603 was cancelled or surrendered before the year 1936, i.e. does not refer to the Holocaust Era, and therefore no payment can be offered in respect of it.”

Generali provided no documentary proof of how it decided that the policy was surrendered before the year 1936. Mr. Curtis disputed Generali's explanation because his father's business continued successfully long after 1936, until his deportation in 1944. (the Jews of Hungary did not become subject to the full Nazi fury until the spring of 1944, and that many businesses were able to function up until then.) However, under ICHEIC's "negative evidence rule," Generali's denial is binding and no appellate arbitrator would have the right to reverse the decision.

Sandor Kertesz most certainly could have used the money Generali owed him after surviving the camps in 1945 when the war ended. When George Curtis tried to redeem his father's policy – payable in "New York Dollars – 55 years later, the ICHEIC value – if it had been paid – would have been about \$70,000. George Curtis was over 90 years old, and the funds could have helped him a great deal had Generali honored the policy.

Sello Fisch. Sello Fisch now lives in Queens, New York. He was born in 1935 in Berlin, Germany, where his father and maternal grandfather ran a successful business. In 1939, he and his family (parents, older sister, and maternal grandparents) fled to Shanghai. After filing a claim with ICHEIC in August 2000, it was discovered that Mr. Fisch's father, Herman Fisch, had bought a policy from Generali. The General Trust Fund (GTF), nonetheless, determined that he was ineligible for any compensation because the policy was allegedly not included in Generali's so-called "mechanized records" as of 1936 (the year that Generali reportedly began using punch cards to mechanize its system). Solely on the basis of such "negative evidence," the GTF's final decision of October 30, 2003 concluded that Herman Fisch had either cancelled or



redeemed his policy before 1936.

Survivors and survivor advocates universally condemn the negative evidence rule. However, even under ICHEIC's rules and decisions, Mr. Fisch should have been able to escape the operation of this rule because under ICHEIC Rule C.5, "negative evidence" could not be used in situations where the Holocaust was deemed to have begun in the country concerned "prior to the year in which the policy no longer appeared on Generali's mechanized records," which, in this instance, allegedly, was 1936. Since Mr. Fisch's father moved to Berlin in 1928, his policy should not have been subject to the negative evidence rule, because under ICHEIC rules the Holocaust was deemed to have begun in Germany in 1933, after the Fisch family moved there. Even so, Chairman Eagleburger personally rejected NYLAG's effort to distinguish his case, asserting an exception to the exception that the negative evidence rule did not pertain to the country of residence, but the country where a policy was purchased (Poland in the Fisch family's case).

Untold Numbers of Generali Claimants Were Denied Based On Negative Evidence. Generali denied over 5,000 claims in ICHEIC. Since Generali outright rejected over 5,000 claims, it is likely that hundreds or even thousands of these were "negative evidence" cases. Unfortunately, hard numbers are not available – mostly because ICHEIC refused to comply with Congressionally mandated reporting requirements, and then, over the objections of the California insurance commissioner, agreed to bury claims and other files for several decades. This is also a maneuver Congress must reverse.

But the operative problem is that survivors and heirs should never have been

subjected to this trickery. If the courts had remained open for claims, these practices would have been avoided because of the threat that a real court would apply rules of accountability and would have operated with the transparency required by the Constitution. But instead, ICHEIC used “relaxed standard of proof” as a slogan, not a rule, and gave Generali the benefit of the doubt.

Miklos Griesz. Miklos Griesz was born in Budapest, Hungary, the child of wealthy, prominent, and caring parents, Arnold and Alice Griesz. He submitted an ICHEIC claim on April 6, 2000, listing Generali as one of two possible companies that sold a life insurance policy to his father Arnold Griesz in Budapest, Hungary. It also identified three possible heirs, “my mother, my brother, and myself.”

Four years later (February 24, 2004) the Generali Trust Fund denied his claim on the basis that “no match [was] found.” However, facts later unearthed show that all that time, *Generali had a record that it sold a policy to Alice Spiegel Griesz, which listed “her son Miklos” as a beneficiary.* In over four years, Generali either did not find or did not disclose vital information that Miklos Griesz was a named beneficiary on a policy sold in Hungary. Either way, they were unbelievably incompetent or simply determined to withhold the information from the claimant and hope he relied on their response that there was “no match found.”

Fortunately, Mr. Griesz was represented by the New York Legal Assistance Group (NYLAG), which recruited two large New York City law firms to help with his claim. After they appealed the original denial, the lawyers located Mr. Griesz’s mother’s name on the ICHEIC website. Even then, Generali hardly exhibited the spirit of “relaxed standards of proof.” Generali responded:

there is an insured in the archives of Assicurazioni Generali named Alice Spiegel Griesz. We wish to clarify, however, that this is the first time the claimant has brought this name to our attention.

This of course was not true. Miklos Griesz was a named beneficiary of his mother's policy, and Generali had that information in its records, but failed to inform Mr. Griesz of that fact because he filed as a beneficiary of his *father's* policy, not his mother's.<sup>18</sup>

6. ICHEIC Did Not Require Companies to Disgorge Information It Provided About Its Jewish Customers.

ICHEIC never required the companies to be accountable for their true conduct during and after the Holocaust, and this failure robs survivors of any sense of true justice, and robs history of the truth about this facet of the Holocaust. It is well-known that companies turned over records and funds relating to their Jewish customers to the Nazi and Axis authorities. ICHEIC failed to render a proper accounting of the companies' participation in the forced redemption of Jews' insurance policies and other practices whereby the companies assisted the authorities in looting their customers' property.

The companies defense of their conduct for the last decade has centered on the representation that they "could not identify who was Jewish" among its customers after WWII, hence shouldn't be viewed as a monsters for failing to pay policies of Jews who were Holocaust victims. However, contrary to such statements, records have surfaced that reveal at least one company's Italian portfolio had data entries including:

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<sup>18</sup> ICHEIC's standard operating procedure was that the companies processed claims. ICHEIC did not oversee the decisions and decided whether or not to make an offer. The only "review" occurred if a claimant filed an appeal. Even then, the Arbitrators provided no oversight, as shown by Jack Rubin's case. There was simply no independent advocacy for claimants built into the ICHEIC process.

“Jewish race of policyholder (starting from 1938)”  
 “Jewish race of the insured person (starting from 1938)”  
 “Jewish race of beneficiary in case of death (starting from 1938)”  
 “Jewish race of beneficiary in case of survival (starting from 1938) at maturity”

This source of the information is an “examination of the collected data on unpaid policies shows that *some of the insured had to specify their ‘Jewish race.’*” This revelation contradicts statements made over the last decade by the companies and their representatives.

In addition, documents such as Generali’s letter to the “Prefect of Milan,” in which the company did indeed identify its Jewish customers to authorities, repudiates the companies’ denials:

“The holder of the policy in the margin is Mr. Arrigo Lops Pegna of Ertore – the beneficiary is the wife, Mrs Gemma Servi in Lopes – Milan, O sc C Ciano 10, both of whom belong to the Jewish race. We renounce the aforementioned policy and signify to you that the same is in effect for an insured sum of L. 100,000.”

How many of these kinds of transactions were “otherwise settled before maturity?”

Don’t survivors and doesn’t history have a right to all these facts?

Generali, for one, seemed not to be terribly bothered by the horrors that had been inflicted on tens of thousands of its customers during the Holocaust, nor its legal obligation to seek out and pay the victims or their heirs. According to its website, Generali’s shareholders managed to convene in 1946 and “approved the 1944 accounts.” By 1944, there was no question about the catastrophe that had befallen millions of European Jews. Since Generali had between 10 and 15% of the European Jewish market, tens of thousands of those victims were its customers. *How in the world were the shareholders in 1946 able to “approve the 1944 accounts?”* How were tens of millions

of dollars (in whatever currencies) owed to the Jewish insureds and their families accounted for in 1946?

ICHEIC never probed this conduct, and its true scope will remain hidden from public knowledge or the knowledge of the affected families if HR 4596 is not enacted. This is the kind of information that a judge and jury would take a lot more seriously than ICHEIC evidently did, and one reason Congress should restore survivors' rights to a full accounting of the companies' conduct.

How much more information like that lies in their records? No one knows because ICHEIC did not probe that issue nor require the companies to disclose all records pertaining to their interaction with the authorities during the war, nor their internal accounting records or board minutes showing how they dealt with Holocaust victims' policies after the war. How can Congress ratify a "policy" denying survivors access to courts without demanding the companies produce all relevant information about their conduct?

#### V. Arguments Against HR 4596

Opponents of HR 4596 have coalesced around four (4) major arguments: (1) it is premised on inaccurate estimates of the unpaid value of Holocaust victims' policies; (2) it violates "deals" to provide "legal peace" for German and other insurance companies who participated in ICHEIC; (3) it isn't likely to produce enough successful claims by survivors to justify the political costs of the ill-will it will engender among foreign governments whose insurance companies profited from the Holocaust; and (4) legislation will cause Germany to reduce funding to assist needy survivors.

The Members will see that these arguments are not only irrelevant to the restoration of Holocaust survivors' and heirs constitutional rights, they are not factually correct.

A. HR 4596 estimates are accurate and conservative. Opponents claim the legislation is based on the "erroneous allegation" that ICHEIC paid less than 5% of the total amount owed to Jewish Holocaust victims and heirs. The Preamble to HR 1746 in the 110<sup>th</sup> Congress stated that compared to an extremely conservative estimate of \$17 billion in unpaid policies in 2006 values, ICHEIC succeeded in paying only \$250 million for policies.

The \$17 billion estimate is based on an analysis by economist Sidney Zabłudoff in the spring 2004 *Jewish Political Studies Review*. Mr. Zabłudoff presented his analysis at the House Foreign Affairs Subcommittee hearing on October 3, 2007, and at the House Financial Services Committee on February 7, 2008. He used a base total value of nearly \$600 million for the total value of Jewish policies in force in 1938, which was a consensus of ICHEIC participants. He then subtracted out the amount of policies paid for in post-war restitution programs (assuming 70 percent for most west European countries and 10 percent for east European countries). He then brought the remainder up to date by using the extremely conservative 30 year U.S. bond rate. The result is that value of unpaid value of Jewish policies is conservatively estimated at \$17 billion in 2006 prices. Therefore, the opponents' criticism is unfounded.

There is no data contradicting Mr. Zabłudoff's conservative estimates. The only study conducted by ICHEIC, the Pomeroy Ferras Report, agrees in most material respects with Mr. Zabłudoff's base calculations about the number and local currency value of

Jewish policies at the start of the Holocaust. The Report did not, however, make any effort to estimate of the outstanding current value of the Jewish life insurance policies.<sup>19</sup> That is what Mr. Zabludoff did in his 2004 article, using consensus numbers, to which the Preamble to HR 1746 referred, and supporters of HR 4596 cite.

In his Europe Subcommittee testimony in October 2007, State Department representative Christian Kennedy's argued that the total current unpaid value was \$3 billion, as opposed to the \$17 billion estimated by HR 1746. Although Amb. Kennedy gave no explanation for his \$3 billion number, it was later explained to be an estimate of the 2003 unpaid value of policies using the "ICHEIC valuations" as a base. The ICHEIC valuation system was not a true economic model; it was a a political *compromise* that allowed the companies to pay 10-15% of the actual economic values in Germany and Eastern Europe.

However, even taking Amb. Kennedy's \$3 billion 2003 figure, and updating it to 2010, the highly discounted "ICHEIC valuation" of unpaid policies would be \$4.1 billion. So, using the most generous estimate of ICHEIC 'success,' i.e. using the total payouts for policies, administration, and humanitarian funds through ICHEIC at \$450

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<sup>19</sup> The Pomeroy-Ferras Report states: "The Task Force did not want to make any proposal of a valuation process in order to bring the Holocaust exposure to a 1999 value." International Commission on Holocaust Era Insurance Claims, Report to Lawrence Eagleburger, Chairman, by the Task Force Co-Chaired by Glenn Pomeroy and Philippe Ferras on The Estimation of Unpaid Holocaust Era Insurance Claims in Germany, Western and Eastern Europe, at 6-7.

Consequently, the opponents of HR 4596 are incorrect when they defend ICHEIC with such broad and inaccurate statements as the one State Department witness Christian Kennedy made before the Financial Services Committee in February 2008: "ICHEIC studies show that its claims and humanitarian programs did a credible job of adjudicating and paying claims on life insurance policies in effect during the Holocaust era." Ambassador J. Christian Kennedy, Special Envoy, Office of Holocaust Issues, United States Department of State, Statement before the House Financial Services Committee, February 7, 2008, at 6. Contrary to Mr. Kennedy's testimony, there is no such study.

million, that sum would represent less than 12 percent of the lowest valuation total for the value of Jewish owned policies, when measured in the way most politically favorable to the insurers.

HR 4596 opponents also misuse numbers to portray a false picture of ICHEIC's performance and exaggerate its alleged success. They say ICHEIC paid \$305 million to "48,000 Holocaust survivors or their heirs for previously unpaid insurance policies." This is not true. ICHEIC paid \$250 million for unpaid policies. ICHEIC made an additional 31,000 payments of \$1,000 each (totaling \$31 million) which were termed and treated as "humanitarian" in nature.

The "humanitarian payments" were neither intended by ICHEIC nor interpreted by survivors as payments on policies. They were viewed as an attempt to give "something" to the tens of thousands of applicants whose family policies ICHEIC or the companies would not acknowledge. ICHEIC paid \$1,000 but promised to "keep looking." Holocaust survivors have uniformly stated that they considered the \$1,000 as tantamount to calling them liars. See Testimony of Israel Arbeiter before the U.S. House of Representatives Financial Services Committee, February 7, 2008, and Testimony of Alex Moskovic and Jack Rubin before the U.S. House of Representatives Committee on Foreign Affairs, Subcommittee on Europe, October 3, 2007.

"Legal Peace." The insurance industry, the German Government, the State Department, and certain organizations that were part of ICHEIC (and their affiliates) oppose HR 4596, saying that "a deal is a deal," and the insurance companies were promised "legal peace" if they participated in ICHEIC. The short answer to this argument is that the U.S. Government did not agree to waive survivors' rights to sue



insurance companies in any Executive Agreement or other action arising out of the Holocaust restitution cases and negotiations. Today, opponents of HR 4596 want to give German insurers more than they were able to negotiate for in 2000, and more than the U.S. government has the constitutional authority to provide. Moreover, they would extend that immunity to Generali, an Italian company subject to no executive agreement or any other official U.S. government connection.<sup>20</sup>

Even though the U.S. never agreed to the immunity now demanded by Germany, unprecedented court decisions have held that survivors may not sue insurers over policies sold to their loved ones before WWII. But, even those very court decisions limiting survivors' access to courts today cite *the absence of Congressional action on the subject of Holocaust victims' claims*, an obvious acknowledgement of Congress's authority to guarantee access to courts through legislation. *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003), *In re Assicurazioni Generali, S.p.A., Insurance Litigation*, 240 F.Supp.2d 2374 (S.D.N.Y. 2004). HR 4596 would restore survivors' rights to sue recalcitrant insurers, rights that were never questioned prior to *Garamendi*.

The basis now cited for the "legal peace" argument is the "\$5 billion" German Foundation Agreement. That Agreement arose from the dismissal of the lawsuits filed by Holocaust survivors against German manufacturers seeking compensation for slave labor they were forced to perform to survive. The courts held that international treaties

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<sup>20</sup> Stuart Eizenstat's book *Imperfect Justice*, at page 270, refers to a letter from Solicitor General Seth Waxman which addresses the issue, but that letter has never to the best of this writer's knowledge been made public. It is imperative that this Committee review this correspondence and make it publicly available so that survivors, heirs, the general public, and Congress can be completely informed about the formulation of this public policy decision that has profoundly and adversely affected thousands of Holocaust victims and families.

settling WWII, which encompassed infliction of personal harm during the war, precluded the judicial branch from allowing suits for personal injuries such as the injustices of slave labor. While the cases were on appeal, Germany and the U.S. Government entered into a mediation to settle the slave labor claims.

At the eleventh hour, after months and months of negotiations over slave labor compensation, and after months of speculation on the total to be offered, the Germans reportedly demanded that if the U.S. did not agree to include “insurance” in the agreement, there would be no slave labor settlement. Stuart Eizenstat’s book about the negotiations describes the Germans’ aggressive tactics to include insurance in the slave labor deal. Eizenstat, at 268. As part of the “settlement,” Germany agreed that its insurers would participate in ICHEIC, subject to a cap on their potential exposure. The “cap” was determined without any independent audit or investigation or analysis of the *actual* amount of insurance theft the German companies committed. The arbitrarily determined cap for all German insurers and those who sold in the German market was approximately \$200-250 million—with a portion earmarked for policies and a portion earmarked for humanitarian programs.

The U.S. agreed in return that if German companies were sued in U.S. courts, it would file a “statement of interest” in the case stating that it would be in the “foreign policy interest” of the U.S. for the case to be dismissed “on any valid legal ground.”<sup>21</sup>

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<sup>21</sup> The language of the Agreement states: “(1) The United States shall, . . . inform its courts through a Statement of Interest, in accordance with Annex B, and, consistent therewith, as it otherwise considers appropriate, that it would be in the foreign policy interests of the United States for the Foundation to be the exclusive remedy and forum for resolving such claims asserted against German companies as defined in Annex C and that dismissal of such cases would be in its foreign policy interest.” Annex B provides more detail on what the Government would say: “The United States will recommend dismissal

President Clinton refused to immunize German or any other insurers solely because they participated in ICHEIC, and the agreements are clear on this point. The President did not agree to abolish survivors' right of access to courts, nor could he have done so.

Several members of Congress immediately protested the Executive Branch's decision to include survivors' insurance rights within the German Foundation settlement, which was always believed to be limited to slave labor.

[W]e reject the notion that insurance claims estimated to be worth billions could be satisfied by the arbitrary DM 300 million (\$150 million) set aside in the German Foundation Fund.

Letter of September 11, 2000, from Congressmen Waxman, Lantos, et al. to the Honorable Janet Reno, Attorney General of the United States.

Several of these Representatives also wrote to the Solicitor General of the United States to protest the inclusion of insurance in the German-U.S. Agreement, and the Justice Department's efforts to undermine states' authority over Holocaust survivors' insurance claims:

Since 1998, Holocaust insurance claims have been managed by the International Commission on Holocaust Era Insurance Claims (ICHEIC) under a seriously flawed process. As reported in a Los Angeles Times story by Henry Weinstein on May 9, 2000, ICHEIC has rejected three out of four of the claims that were fast-tracked and considered well documented. No appeals process exists and the courts have provided the only recourse available to Holocaust survivors. *We were shocked, therefore, to learn that the recent slave labor settlement reached between the U.S. and German governments would also resolve claims settled by ICHEIC and undermine viable class action suits.*

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on any valid legal ground (which, under the U.S. system of jurisprudence, will be for the U.S. courts to determine).” It adds: “The United States takes no position here on the merits of the legal claims or arguments advanced by plaintiffs or defendants. The United States does not suggest that its policy interests concerning the Foundation in themselves provide an independent legal basis for dismissal, . . . ”

See September 11, 2000 Letter from Congressman Henry Waxman, et al, to U.S. Solicitor General Seth P. Waxman (Emphasis supplied).<sup>22</sup>

The Justice Department made it clear that under the Agreement, the Government did not purport to eliminate Holocaust survivors' legal claims against German insurers. Assistant Attorney General Raben, correctly stated that the terms of the agreement only required the Government to state "that it would be *in the foreign policy interests* of the United States for the Foundation to be the exclusive remedy and forum for resolving such claims," and "*that the United States does not suggest that its policy interests concerning the Foundation in themselves provide an independent legal basis for dismissal of private claims against German companies.*" *Id.* (Emphasis supplied).<sup>23</sup>

And, in the year 2000, its brief in the Ninth Circuit in *Gerling v. Kelso*, the Clinton Administration made it clear to the Court that neither the U.S.-German agreement, nor the policy underlying any agreement, nor any company's participation in

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<sup>22</sup> Even Roman Kent, Treasurer of the Claims Conference and an ICHEIC participant, did not agree that insurance belonged in the slave labor agreement: "Mr. Kent . . . said the insurance question should not have been grouped with the slave labor, as they are separate issues." See ICHEIC Minutes, November 15-16, 2001. Ironically, today, he is one of the institutional defenders of the proposition that Congress should not pass legislation to restore survivors' rights, because if it does Germany would consider it a breach of trust and withhold funding for new programs periodically negotiated by the Claims Conference.

<sup>23</sup> It is also ironic in light of the maximalist position now being taken by Germany and the insurers that at the time of the Agreement, the Justice Department also acknowledged that if ICHEIC did not prove to be an effective forum for solving Survivors' claims, even the limited protection that had been agreed to would be at risk: "Should the German Foundation fail to be funded and brought into full operation, or should the United States conclude that ICHEIC cannot fulfill the function for which it was created, the United States will certainly reconsider the balance reflected in its views on the constitutional issues." See September 29, 2000 Letter from Assistant Attorney General Robert Raben to Congressman Henry A. Waxman.

ICHEIC, independently justified dismissal of survivors' claims for payment of unpaid insurance policies in lawsuits in U.S. courts.

-- the United States "has not undertaken a duty to achieve legal peace for German companies against state litigation and regulatory action." (p. 8).

-- "the Foundation Agreement itself does not preclude individuals from filing suit on their insurance policies in court . . . ." (p.8).

-- the Agreement does not "mandate that individual policyholders or beneficiaries bring their claims in ICHEIC." (p. 8-9).

-- the American Insurance Association (AIA) "is mistaken in asserting that the Foundation Agreement is in 'direct conflict' with California law, if by this AIA means to suggest that the Agreement by its terms preempts the California statute." (p.9).

-- the District Court "overestimated the Agreement's ultimate legal effect when it predicted that the Agreement would make the Foundation on 'exclusive remedy' as a matter of U.S. law." (p. 9, note 4).

See Brief for Amicus Curiae the United States of America in Support of Affirmance in *Gerling Global Reinsurance Corp. v. Kelso*, Case No. 00-16163, etc. in the United States Court of Appeals for the Ninth Circuit, at 7-9. ("DOJ Ninth Circuit Brief").

In 2003, the United States Supreme Court in the *Garamendi* case held by a 5-4 vote that even though the Executive Agreement between the U.S. and Germany did not expressly preempt state law, there was a separate "federal policy" favoring "nonadversarial resolution" of Holocaust victims' claims that preempted the California Insurance Commissioner's power to subpoena records from German companies.<sup>24</sup> In that case, several members of Congress filed an amicus brief supporting California's primary jurisdiction over insurance regulation and opposing the unlegislated "implied" expansion

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<sup>24</sup> In 2003, when the case went to the Supreme Court, the Bush Administration omitted the above caveats contained in the Ninth Circuit brief.

of federal executive authority to preempt state law. Unfortunately the Congressional *amici*'s position was not adopted by the Court.

This much is certain. No insurance company, and no country obtained any agreement from the United States Government to abolish survivors' and heirs' right of access to courts. No State Legislature enacted any law proscribing survivors' or heirs' rights to sue insurers. HR 4596 does not overturn any U.S. Government promise to provide legal immunity to international insurers, in spite of all the rhetoric that it would "break faith" with the companies and countries that joined ICHEIC. To the contrary, they all exploited the practical impediments created by ICHEIC through the hushed tones of "international diplomacy." The fact that ICHEIC's promises were never fulfilled is irrelevant; legally it could *never* have preempted state law rights prior to *Garamendi* and the *Generali* decisions.

Unfortunately, the courts have for the moment accepted the sweeping interpretation of Executive Authority that the insurance companies have asserted against survivors, contrary to the executive agreements and their clear interpretation by President Clinton, that ICHEIC alone does not provide immunity from lawsuits by survivors and heirs in U.S. courts. This usurpation of Congress's authority not only makes Holocaust survivors second class citizens under U.S. law, it radically expands executive power and infringes on states' rights. But Congress without question has the authority to enact legislation to correct any interpretation or supersede any provision of the Executive Agreement. *Weinberger v. Rossi*, 456 U.S. 25 (1982).

Congress retains the authority to restore the *status quo ante* for Holocaust survivors and heirs, to enable them to bring court actions against the insurers who took

their parents' and grandparents' sacred investments to protect their loved ones, then turned their backs on the insureds, heirs, and beneficiaries after the horrors of the Holocaust. Now is the time for Congress to rectify this 60-plus year injustice. Congress, not the Executive Branch, has the constitutional and statutory authority to regulate international commerce, and to define the jurisdiction of the federal courts. Therefore, HR 4596 invokes fundamentally Congressional prerogatives, which the Executive Branch's unilateral actions undermine in an intolerable and harmful fashion.

Cost/Benefit Analysis of HR 4596. Another cynical objection raised to HR 4596 is that it might not generate enough actual payments to Holocaust survivors to justify the political opposition mounted by the insurance companies and the governments seeking to protect them. This argument completely misses the point. HR 4596 is needed to restore Holocaust survivors' legal and constitutional rights. It represents common sense and common decency in allowing Holocaust survivors and families access to the United States court system to control their own right to obtain information from the culpable insurers, seek the truth about their families financial history, and recover the funds they might be owed. The status quo creates one subclass of Americans who cannot go to court to sue insurers that pocketed their hard-earned money – Holocaust survivors. This is an untenable position for America in the year 2010.

Moreover, the analysis above demonstrates that more than 60 years after the end of WWII, only three percent (3%) of the funds owed by these insurers to Holocaust victims' families has been repaid, after an excruciating nine (9) year hiatus in which ICHEIC was given sway to allow some companies to fly below the radar screen and still succeed in holding onto over 95% of their unjust enrichment. Given the shortcomings in

ICHEIC's names disclosure record and claims payment record, HR 4596 is not only morally necessary, it is a practical imperative to allow all victims' families a fair chance to recover their financial due. No amount of empty diplomatic rhetoric justified second class citizenship for Holocaust survivors.

Further, as Former Congressman Robert Wexler pointed out at a public forum in South Florida on December 10, HR 4596 also sets a marker that the public policy of the United States will not tolerate or condone corporate or institutional profiteering from atrocity, whether against Jews or against any other people. It is appropriate and morally required to use all the tools at our society's disposal to discourage and even punish enterprises that do business with ruthless and genocidal regimes like those that do business with the Sudan, given the atrocities of Darfur.

The evidence that multinational insurers profited from the Holocaust to the tune of some \$20.5 billion in today's dollars is overwhelming. Making them pay for their unjust enrichment – even 63 years after the end of the war – sends a message to other enterprises that might turn a blind eye to murder, and thereby save lives and prevent future atrocities.

4. Argument that passage of HR 4596 will result in reduction of assistance from Germany.

When it became evident that the “legal peace” argument was not defensible on the merits, opponents of HR 1746 in the last Congress adopted a new argument, that passage of insurance legislation would cause the German government to cut some of its limited programs in existence today that help survivors. This argument was formalized in a letter from the Claims Conference to Judiciary Committee Chairman Conyers, which



stated that passage of HR 1746, would “jeopardize critical ongoing negotiations with Germany and other governments for the continuation and expansion of hundreds of millions of dollars in crucial funding, immediately required, for survivors in need in the United States and worldwide.”

The first and most obvious response, in the words of the Holocaust Survivors Foundation USA, is that there is no logical or moral connection between allowing individual Holocaust survivors access to courts to vindicate their property rights, and the German government’s fulfilling its moral obligation to improve the lives of the remaining thousands of Holocaust survivors whose lives were destroyed by Hitler and who continue to struggle today. According to the HSF, legislation such as HR 4596 would “reinforce the principle that Holocaust survivors, and legal heirs, own the rights to negotiate and make decisions over their own property claims and their families’ legacies.”

Moreover, as the HSF states, not only is the linkage objectionable in principle, the threat has been completely repudiated in fact. No German official, including Klaus Scharioth, the German Ambassador to the United States, has ever stated in any public forum that passage of legislation restoring survivors’ rights to recover insurance policies would threaten the German *government’s* commitment to provide funding for various programs for Holocaust survivors.

Further, several members of Congress and Congressional staff privately contacted the German Embassy when this issue was raised in 2008, and the Embassy specifically denied any connection between legislation to restore court access for insurance claimants and Germany’s provision of various pensions and other payments for survivors.

However, with insurance companies’ supporters continuing to make this claim,

the Holocaust Survivors Foundation USA wrote a letter to German Ambassador Klaus Scharioth in December 2008 asking for clarification of the government's position on the effect of insurance legislation on the German government's provision of funding for survivors' programs. Though the response, dated Feb. 10, 2009, repeats Germany's opposition to insurance legislation because of "legal peace" (clearly invalid based on the Clinton Administration statements and the texts of the agreements), the Embassy stated that there was no truth to the argument that Germany would cut benefits for survivors if insurance legislation became law:

However, while we continue to oppose HR 1746 and any similar bills, Germany has never threatened to respond by cutting benefits to poor survivors, and we have no intention to do so in the future. Pension payments under the Federal Compensation Act (BEG) and support to existing JCC (Claims Conference) programs, including pensions and one-time payments, will, of course, continue as provided for under the law and international agreements.

February 10, 2009 Letter from German Ambassador Scharioth to David Schaefer, President of the Holocaust Survivors Foundation USA, Inc.

However, this question does raise an additional important policy issue for the Committee and the Congress, which is that the current framework for funding social services for survivors today is totally inadequate. To quote HSF again, the "failure of Germany and the Claims Conference to produce a minimal basket of social services for survivors predates and is completely unrelated to" legislation to restore survivors' legal rights.

Ira Sheskin, the leading American demographer of Jewish communities, found in 2004 that over 40,000 Holocaust survivors in the United States live at or below the official federal poverty level, and another 40,000 have incomes so low they are

considered poor. According to the Greater Miami Jewish Federation, citing data from several Jewish demographers filed with the Federal Court in 2004, the problem of survivor poverty is a worldwide phenomenon.

	<u>Survivor Population</u>	<u>Number In or Near Poverty</u>
United States	175,000	87,500
Israel	393,000	137,300
Former Soviet Union	146,000	126,000

Sources: Sheskin, Estimates of the Number of Nazi Victims and Their Economic Status, January 2004; Brodsky and Della Pergola, Health Problems and Socioeconomic Neediness Among Jewish Shoah Survivors in Israel, April 2005; American Joint Distribution Committee, Presentation on the Condition and Needs of Jewish Nazi Victims in the Former Soviet Union, January 2004.

It should also be noted that the principal source of funding for social services for Holocaust survivors is not the German government, but funds obtained by the Claims Conference through its acquisition and sale of properties and businesses formerly owned by Jews in East Germany that were not recovered by individual victims or heirs after WWII. HSF and other survivor groups, including a growing movement in Israel, have consistently raised questions about the efficacy, transparency, and adequacy of this system. A few news articles addressing this problem are attached as exhibits hereto. So, as HSF noted, while the German government does periodically augment existing programs for survivors, including \$320 million announced in June 2008, the status quo is not doing an adequate job across the board.

In 2008, the Claims Conference announced the addition of \$320 million for programs for Holocaust survivors from their negotiations with Germany to augment the

basic reparations pension program (which provides payments to only a fraction of all survivors). First, \$250 million was payable over a ten-year period, so it in reality equals \$25 million annually. Most of that sum (\$166 million) represents an 8% cost of living increase for various existing programs, payable primarily to residents of Eastern Europe. Another \$83 million (over ten years) will provide first-time payments to some 2000 survivors who lived in Western Europe during the Holocaust but who were excluded from prior pension programs.

A total of \$70 million of the \$320 million, representing a two-year budget for home care funds for survivors, would directly augment social services for poor survivors. That is an average of \$35 million per year in new home care funding for the entire world. When measured against the actual needs of Holocaust survivors in the United States and elsewhere, these “supplemental” funds made only a small dent in the catastrophic shortfall in funding for survivors, and left tens of thousands of survivors suffering and in poverty without adequate home care and other services.

In 2004, the U.S. Jewish Federation system estimated that the annual budget that would be needed to provide the unmet needs for basic social services for poor survivors in the United States alone, *exceeded \$70 million per year*.<sup>25</sup> With this population now in their 80s and 90s, and with Holocaust-related trauma a cause of significant medical and other problems, a major component of that shortfall is funding for in-home care for survivors.

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<sup>25</sup> Economist Sidney Zabudoff, participating in a roundtable for the Bet Tzedek Legal Aid Society in Los Angeles estimated the cost of providing a decent level of social services for poor survivors worldwide, assuming a cost of \$25,000 per survivor per year, to exceed \$20 billion. Zabudoff, “The International Remembrance Fund for Holocaust Survivors,” Bet Tzedek Roundtable Discussion, April 2006.

The average annual cost of in-home care for survivors in an average U.S. city is \$9,360. So, assuming for illustrative purposes that all of the “additional” money Germany agreed to provide for home care for the next two years, were spent in the U.S., would serve *fewer than 4,000 Holocaust survivors* per year on average. With tens of thousands of poor survivors living in the U.S. alone, and with similarly dire needs for home care and other vital social services throughout the world, the average \$35 million two-year home care fund announced in 2008 by the Claims Conference, was not nearly adequate to care for this special population.

In 2010, the Claims Conference announced an increased amount of home care funding from Germany, of approximately \$77 million for the year 2010. Again, this sum is a world-wide figure, and as indicated, compared to world-wide needs is a drop in the proverbial bucket.

The issues of survivor poverty and insurance are related but not in the way suggested by the opponents to HR 4596. With so many insurance policies remaining unpaid, there are undoubtedly a very large number of poor survivors whose families’ insurance policies remain unpaid that deserve to have their families’ property rights honored. But there is no negative relationship between Congress acting to restore survivors’ rights of action to recover family insurance policies and the goal of helping poor survivors achieve a dignified standard of living in their final years.

Again, unrelated to restoring survivors’ basic right of access to courts to recover family assets looted by corporations doing business in this country, the HSF leadership has been looking to Congress for leadership in addressing the overarching problems facing survivors as they age. With the level of looted insurance assets in the range of

\$20.5 billion, and the value of other unreturned assets exceeding \$160 billion,<sup>26</sup> it is puzzling and tragic that so many survivors today have to face their final years in poverty and misery.

In 1997, the United States Senate unanimously passed a resolution co-sponsored by Senators Moynihan, Graham, Hatch, Dodd, and Biden, calling on Germany to provide adequate material and social service support so that *all Holocaust survivors* could live in dignity. S.Con. Res. 39, July 15, 1997. The resolution noted that retired SS officers in Germany and elsewhere receive far more generous health care benefits from Germany than Holocaust survivors. It called for, among other goals, that “the German Government should fulfill its responsibilities to victims of the Holocaust and immediately set up a comprehensive medical fund to cover the medical expenses of all Holocaust survivors worldwide.”

Unfortunately, neither Congress nor the United States Government followed through on persuading Germany to live up to these aspirations. Germany, despite its significant commitment to Holocaust education and outlawing Holocaust denial and neo-Nazi movements, and despite what it might have genuinely believed years ago to be a significant set of programs for Holocaust victims, has not committed to meeting this rather minimal standard of decency for all living survivors. *See* correspondence from Holocaust Survivors Foundation USA, Inc. to Chancellor Angela Merkel.

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<sup>26</sup> This amount, which measures price not value of the looted property, uses the US consumer cost of living index and was calculated by economist Sidney Zab Ludoff, “Restitution of Holocaust-Era Assets: Promises and Reality”, Spring 2007 Issue of Jewish Political Studies. To determine 2007 value of unreturned assets, he uses the US Government 30 year bond yield, which provides for minimal appreciation. The result is that in 2007 a conservative estimate of the value of the unreturned assets would be about \$500 billion.

This problem should be met head on. The current framework for providing social services to Holocaust survivors, based principally on funding from the Claims Conference's Successor Organization funds derived from East German properties, augmented by periodic sessions in which the Claims Conference seeks patently inadequate levels of funding to meet the actual needs of survivors worldwide, has allowed tens of thousands of survivors to slip into poverty and live without the dignity of food, medicine, shelter, proper dental care, home care, and other vital needs. It is simply a red herring, and a cynical one at that, for anyone to argue that individuals should have their Constitutional rights to sue unjustly enriched insurance companies eliminated due to the failure of the current restitution establishment and the German government to adequately care for elderly survivors of the Holocaust.

The survivors I represent ask Congress and this Committee to address this problem directly. Perhaps this analysis can form the basis for a constructive discussion about ways to incorporate Holocaust survivors as a special category under the recently enacted health care and insurance reforms, with their full and immediate participation to be funded by adequate grants from the German government.

#### VI. Executive Branch Withholding of Crucial Information from Courts

As noted above, when the *Garamendi* case was being briefed in the U.S. Supreme Court in 2003, the Department of Justice withheld some of the most important comments that the Clinton Administration had conveyed to the Ninth Circuit during the earlier phase of the appeal, i.e. the part distinguishing between its opposition to California's imposition of stricter disclosure requirements on German insurers, which the Clinton DOJ believed was preempted, and survivors' actual state law claims against German

insurers, which the Clinton DOJ said were not to be interpreted as being preempted by the agreement with Germany or the policy underlying that agreement.

In 2008, when the Second Circuit asked DOJ for its position whether cases against Generali conflicted with U.S. foreign policy, it answered “yes” even though the Clinton Administration had said “no” – yet DOJ did not acknowledge its position was a change in policy. Documents obtained via the Freedom of Information Act (FOIA) show that the State Department was determined in 2008 to support Generali regardless of the actual U.S. policy, and despite the Clinton Administration’s previous rejection of Generali’s request.

The documents attached are revealing and disturbing because, in response to a direct question from the Second Circuit to explain U.S. government policy, DOJ advanced a position based on vague or highly improbable “foreign policy interests,” even though (1) it represented a 180 degree change in policy, and its officials understood that the response would result in (2) affirmance of the dismissal of the plaintiffs claims, and (3) an appellate decision that was inconsistent with the U.S. government’s actual foreign policy as expressed in its actual agreements in 2000 and 2001, contrary to prevailing Supreme Court precedent, and which drastically expanded executive authority, far beyond *Garamendi*.

These documents, which are attached as exhibits to this submission, represent the production from only one of the many DOJ components whose records have been requested (including the State Department’s 2009 letter), lead to at least three conclusions.

First, when the Second Circuit asked for its position in August of 2008, the State



Department was determined to inform the Court that litigation against Generali conflicted with U.S. foreign policy despite the absence of an executive agreement between the United States and Italy. This marked a major departure from the Clinton Administration.

Second, in 2008, DOJ officials understood that while a statement in Generali's favor would almost certainly result in the Second Circuit affirming the dismissal of plaintiffs' cases, they also understood that such dismissal was *inconsistent with the actual undertakings of the President, which expressly provided that dismissal of claims could not be based solely on the notion of ICHEIC as the "exclusive remedy."* They also "had reservations" about the reasoning of the district court in dismissing the cases, and realized that the district court decision (and, logically, any affirmance) represented was a "substantial extension of existing precedent."

Third, in 2009, State Department Legal Adviser Harold Koh understood that the Court's decision in the appeal would hinge on what DOJ said about whether the cases conflicted with U.S. foreign policy. In a letter to DOJ, he warned that the 2008 DOJ letter brief was *too weak* in its justification of the U.S. foreign policy interests to persuade the Court. He urged DOJ to "*more persuasively explain why the absence of an executive agreement with Italy does not affect the relative strength of U.S. foreign policy interests in this case,*" casting about for new reasons DOJ might assert to justify support for Generali, and even suggesting others that were fictional. For example, Mr. Koh stated that the filing of a statement supporting Generali was "an essential element of securing the cooperation of those key partners as we pursued a measure of justice for Holocaust victims through cooperative mechanisms," which is not accurate.

What is also astonishing is that these officials not only expressed serious

reservations about the merits of the district court's decision and its inconsistencies with the actual U.S. government "policy," their concerns mirror the precise arguments that I had been making in my trial and appellate filings, as well as in our direct communications with DOJ after the Court's inquiry.

For example, in the Solicitor General Office's memorandum of September 25, 2008, Douglas Hallward-Driemeier recommends that DOJ tell the Second Circuit that there is a foreign policy conflict, but not to address whether that policy actually has the effect of preempting plaintiffs' claims. The memo discusses the problems of the Mukasey-Generali position in detail.

On the merits, I have some reservations about the legal theory on which the district court dismissed the plaintiffs' common law claims. To begin with, the district court holds that the Executive Branch's foreign policy can preempt state law claims even when that policy is not embodied in some formal action that carries the force of federal law. As a general matter, "Executive Branch actions" that "express federal policy but lack the force of law" do not preempt state law. *Barclay's Bank PLC v. Franchise Tax Bd.*, 512 U.S. 298, 329-330 (1994) (dormant Commerce Clause). While *Garamendi* may reflect an exception to that general rule, that principle is still subject to some doubt. Moreover, *Garamendi* involved preemption of State laws that imposed peculiar burdens with respect to Holocaust claims, and in the Executive Agreements, the United States had expressly undertaken to work to eliminate such state burdens. In contrast, the district court here held preempted [sic] the claims of individuals to enforce their common law contract rights. Yet, the Executive Agreements expressly stated that the United States' statements of interest would "not suggest that its foreign policy interests concerning the Foundation in themselves provide an independent basis for dismissal" of individual claims. 39 I.L.M. at 1304.

September 25, 2008 Memorandum of the Solicitor General's Office, at 10-11.

Similarly, Civil Division's September 25, 2008 Memo, at pages 12-13, states:

Arguing for federal preemption in this case would require an extension of the holding in *Garamendi* to a setting in which there is no

executive agreement to support the assertedly preemptive foreign policy, but merely public statements of State Department officials. Furthermore, we would be required to argue that federal foreign policy preempts not only state laws specifically targeted at the problem of post-war reparations for insurance claims – a context in which the Supreme Court viewed the state’s interests as minimal, see 539 U.S. at 4250426 – but also common law claims seeking to enforce traditional tort duties. Although we have argued in other federal preemption cases that the fact a claim arises under state common law rather than positive enactment does not preclude application of conflict preemption, *see, e.g. Riegel v. Medtronic, Inc.*, No. 06-179, Brief for the United States as Amicus Curiae 16-19, it would nevertheless mark a further step beyond *Garamendi* itself.

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An argument for dismissal on these grounds [i.e. political question doctrine] would also pose potential problems, however. Even in cases in which the United States has filed a Statement of Interest pursuant to a Foundation Agreement, there is considerable tension between the position that foreign policy requires dismissal of an action and the express recognition in the Foundation Agreement that the agreement does not itself provide an independent basis for dismissal. . . .

In 2009, in spite of these reservations, the same career people during the Obama Administration persisted in following the Bush position, based (at a minimum) on the State Department Legal Adviser’s determination to support Generali.

Finally, there are handwritten notes on both of Hallward-Driemeier memos, by “ESK.” Under the circumstances, these initials likely denote senior career Deputy SG Edwin Kneedler. In 2008, in addressing the question of “the legal consequence” of the foreign policy urged by State [i.e. that the Commission is the “exclusive remedy” for Holocaust victims’ claims], ESK acknowledged that in the Statement of Interest filed in the German Foundation cases, the U.S. set forth a similar foreign policy but said that the Statement of Interest does not itself furnish a basis for dismissal – although the U.S. urged dismissal on any valid legal ground. . . . “My position . . . is that we should say at

least that – both because it would be consistent with what the U.S. said in Statements of Interest filed pursuant to the Executive Agreement, and because *I think we should get that much on the record now so that we would not appear to have been hiding the ball if this case later goes to the Supreme Court.*”

The DOJ briefs in 2008 and 2009 both failed to make this point with the kind of clarity the Department understood was crucial. And, to no one’s surprise, the Second Circuit relied squarely on the DOJ’s language that plaintiffs’ common law actions against Generali conflicted with U.S. “foreign policy,” which established ICHEIC as the “exclusive remedy” for insurance claims, which the Court held was sufficient, by itself, to require dismissal of plaintiffs’ claims. This holding was a direct result of the fact that that DOJ “hid the ball.”

This only represents the production from one DOJ component. More is due from other components, as well as from the State Department. It is imperative that Congress to independently gather the relevant documents from all participants – the State Department, the Justice Department, and any of the potentially affected insurance companies or any person or entity who had contact, whether paid or unpaid, with any office of the U.S. executive branch, in connection with survivors’ access to courts to recover their family insurance policies, to ensure that all relevant communications and influences – internal and external – are fully exposed and understood. The stakes are far too high to settle for back-room deals when Holocaust survivors’ rights are in the balance.

### Conclusion

As Holocaust survivor Jack Rubin stated before the Europe Subcommittee in October, it is indeed possible and even likely that tens of thousands of Jews' insurance policies went up in the smoke of Auschwitz. But why should the companies be able to retain the billions in unjust enrichment due to their greed and cynicism? Even if only a few additional policies are repaid to individuals, there is no plausible reason to allow the financial culprits from the Holocaust rest easy in 2007 or ever, until they have disgorged their ill-gotten gains. Their unjust enrichment is tainted and must be returned, to the owners or to survivors in need if necessary.

The insurers perpetrated a massive theft of Jewish peoples' property during and after WWII, and has never been held accountable to any serious degree. As Generali's court papers remind us, it was a Jewish-owned and- managed company up until the enactment of Italy's anti-Jewish racial laws in 1938 whereby Jews were relegated to second class status, and the company then dismissed the Jewish owners and managers. It targeted sales to Jewish communities in the Austro-Hungarian Empire since 1804 and was one of the most successful insurance companies in the world, with vast real estate holdings on six continents and reinsurance treaties in several safe haven countries. The same is true for RAS, Reunione Adriatica de Sicurtas, which was another Jewish-owned and –managed insurance company based in Trieste with a similar clientele as Generali.<sup>27</sup> And, like Generali, RAS used the symbol of the Griffin – a well-known symbol of the Jewish faith to European Jews of that era, as its marquee logo. The message could not have been more obvious – it meant that Jews could safely do business with these

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<sup>27</sup> RAS was acquired by the German insurer Allianz in recent years, and its policies were fully within the ambit of what ICHEIC was supposed to recover.

companies and Jews indeed patronized them handsomely. Wealthy, middle class, and even tradesmen-headed households who trusted Generali's and RAS's good name and powerful image indeed trusted them to secure their families' futures.

Their futures turned out to be anything but secure, and between 1938 and 1945, tens of thousands of the insurance companies' Jewish customers became victims of history's most brutal, murderous, thieving crime. Yet, as Generali's website currently reports, as early as 1946, the Generali board *convened its regular meeting and settled all accounts through 1944*. Maybe the fact that the Jewish managers and agents who were removed from their posts, with many killed, explains why Generali acted with such callous disregard for the Jewish customers who had decided to trust the company's supposed integrity. Maybe this is just the way insurance companies act from decade to decade, exploiting successive catastrophes. But the status quo would allow this information and its consequences to remain concealed forever.

There has to date been no accounting of what happened to all of Generali's and RAS's Jewish owners and their shares from 1938. What occurred is essentially a private escheat, or conversion of the Jewish owners' and shareholders' ownership rights in the company. Under the common law, Generali and RAS would be required to divulge the provenance of its assets, and its treatment of its insurance customers. The U.S. government has never taken any informal action, much less any formal action such as a treaty or executive agreement, to impede Petitioner's common law rights to seek the truth.

Other than the extraordinary manner in which Generali's, RAS's, Allianz's, and the other culpable insurers' customers were separated from their normal lives and

property during the Holocaust, those insurers' obligations to pay today, and to pay in the countries where the beneficiaries and heirs demand payment, is a matter of contract, and is quite routine and ordinary. It is the very kind of obligation that the U.S. justice system was created to enforce, with the benefit of discovery, due process, and an independent judiciary.

Mr. COHEN. Thank you, Mr. Dubbin. Appreciate your testimony.

Our third witness, and we would appreciate everybody else sticking with the 5 minutes, Professor Van Alstine, Michal Van Alstine. He specializes in international domestic private law. He is published widely in both English and German in the areas of contracts, commercial law, international commercial transactions. His particular area of scholarly interest is domestic law application of international law through the vehicle of treaties.

Prior to joining the University of Maryland School of Law faculty in 2002, Professor Van Alstine spent 7 years at the University Of Cincinnati College Of Law, during which time he was a four-time recipient of the Goldman Prize for excellence in teaching.

At the School of Law, Professor Van Alstine teaches international business transactions, contract sales, sales financing and commercial law. He served as associate dean for research and faculty development from 2006 to 2010. Before becoming a law professor, he practiced domestic, international and commercial and business law at different firms in the U.S. and Germany.

Professor Van Alstine, please proceed. Thank you.

**TESTIMONY OF MICHAEL P. VAN ALSTINE, PROFESSOR OF  
LAW, UNIVERSITY OF MARYLAND SCHOOL OF LAW**

Mr. VAN ALSTINE. Thank you, Mr. Chairman. I have timed this. It should be exactly 5 minutes.

I am here today to address the legal backdrop for the Holocaust Insurance Accountability Act of 2010. I wish to emphasize, I am not here on behalf of any of the interested parties. I have had no involvement with any of the substantive issues that have led to this legislation, weighty though they are.

My motivation for appearing here is, instead, a deep concern about the constitutional issues that have made legislation such as this necessary at all. My more detailed thoughts are set forth in my statement, but I must admit, Mr. Chairman, that the principles of our Constitution that I will discuss are so elementary that, well, they are taught in elementary school.

And so, I risk sounding like a pedantic law professor when I say out loud that the Constitution establishes Congress, you, as a Federal lawmaker, not the President acting on his own, and certainly not lower-level unelected executive branch officials. Nonetheless, some recent Federal courts, as we have heard, perhaps overawed by the role of the executive branch in foreign affairs, improperly have given effect as law to simple statements of foreign policy by the executive branch officials. It is for this reason that the subject of this legislation is highly worthy of Congress's attention to right what I believe, from a legal matter, is a constitutional wrong.

At the core of the disputes, as you have heard, are the executive agreements that were concluded, I must emphasize, without congressional approval, and the essential legal issue is the extent to which these executive agreements and, more broadly, statements of executive foreign policy have any force as law in the United States. As mentioned, the agreements themselves do not even purport to have the power to dismiss lawsuits.

Nonetheless, in the Garamendi opinion, five to four—and I will note in the margins, three of the five are no longer on the court—



the Supreme Court found that the foreign policy reflected in the executive agreements precluded direct interference by the California insurance disclosure statute. Unfortunately, but entirely predictably, the court's immoderate rhetoric in *Garamendi* has led to even greater claims of unilateral executive lawmaking powers and to Federal lawsuit—the Federal courts now dismissing otherwise entirely valid lawsuits based solely on claims by executive branch officials that is contrary to the foreign policy of the United States.

In my view, these opinions violate fundamental principles of separation of powers and federalism at the core of our Constitution. I hardly need to remind the Committee that the Constitution created significant procedural hurdles to the creation of Federal law, and those hurdles required the cooperation of both houses of Congress, typically, and the President. And the fact that we are discussing the preemption of state law changes nothing of relevance here other than minor issues I don't have time to talk about.

The Federal Government, indeed, has the power to displace even neutral state laws of general application, especially in matters of foreign affairs, but it may only do so acting through constitutionally-empowered institutions—read Congress—following constitutionally-prescribed procedures. Nothing in this mandatory procedure for creating Federal law gives the force of law to unilateral executive agreements or unilateral statements of foreign policy.

The Constitution's finely-wrought procedures for Federal lawmaking serve important ends of transparency and representative democracy. They ensure that the law is made in the open and with the input of the people's elected representatives in Congress. Under the misguided recent Federal court opinions, in contrast, I must emphasize this: the very content of the law is subject to the whims of the executive branch from time to time, from subject to subject, and even from case to case.

As I note, there is an example right now of this, the BP fund process going on with regard to the Gulf Oil Spill. At the present time, this process is entirely voluntary, but under the Federal court opinions, this could change at any time at the whim of the executive branch. If some future executive branch officials were to determine at the behest of a foreign government, industry groups, BP itself, or in any way we probably will never find out, that the lawsuits against BP in court were contrary to our foreign policy, the courts would dismiss the cases on that basis alone.

Now, even in the few and narrow cases where the Supreme Court has recognized sole executive agreements with foreign countries, it has emphasized that their legal effect must depend decisively on the existence of longstanding approval of Congress. It is thus, in any event, entirely appropriate for Congress now to reassert its proper authority as the Federal lawmaker under the Constitution and to declare its actual intent.

And indeed, I just noted this now—and I might go 15 seconds over—there is a perverse feedback loop here. If you do not pass this legislation, in the future, litigators are going to say, "See, Congress agrees with the President dismissing cases on his own," typically lower level officials, "because Congress refused to do anything about it."

Finally, you certainly have the power to take away the preemptive effect under the Constitution. The Constitution expressly gives to you, to Congress, the power to regulate foreign commerce. In exercise of this power, the Supreme Court has repeatedly held throughout history that you may even abrogate a formal treaty, and that certainly must apply as well to the domestic law effect of a unilateral executive agreement or mere statements of foreign policy.

And one last thought to give you a sense of how much we are talking about, there are something like 15,000 to 18,000 executive agreements out there.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Van Alstine follows:]

PREPARED STATEMENT OF MICHAEL P. VAN ALSTINE

*Statement of Professor Michael P. Van Alstine*

*University of Maryland School of Law*

Before the United States House of Representatives  
Committee on the Judiciary, Subcommittee on Commercial and Administrative Law  
September 22, 2010

\* \* \*

My name is Michael P. Van Alstine and I am a Professor of Law at the University of Maryland School of Law in Baltimore, Maryland. I offer this Statement in connection with HR 4596 now pending before the House of Representatives, entitled "The Holocaust Insurance Accountability Act of 2010." I have had no involvement with any of the persons or organizations whose interests would be affected by HR 4596 (other than being asked if I would be willing to provide this testimony). I instead offer this Statement in my individual capacity as a disinterested law professor whose areas of scholarly inquiry include the respective roles of Congress, the Executive, and the federal Judiciary in establishing and enforcing the foreign affairs law of the United States.

My motivation here is a deep concern about the constitutional issues that have made legislation such as HR 4596 necessary. HR 4596 has as its purpose to validate, against claims of federal law preemption, certain causes of action and disclosure requirements under the laws of the several states regarding Holocaust-era insurance policies. In my view, the legal grounds on which some recent federal courts have found such federal law preemption in the first place are profoundly flawed. Indeed, it is my opinion that these federal court preemption decisions are corrosive to our constitutional system in which federal law must be established by constitutionally empowered institutions following constitutionally prescribed procedures. It is

for this reason that I have joined certain *amici curiae* briefs before the Supreme Court of the United States in cases that raise similar issues on the power of the executive branch to preempt state law based on foreign policy preferences. See *Amicus Curiae* Brief of Constitutional and International Law Scholars in Support of Respondent, *Medellin v. Texas*, No. 06-984 (August 23, 2007); Brief of *Amici Curiae* of Professors of Constitutional Law and Foreign Relations Law in Support of the Petition for Writ of Certiorari, *Weiss v. Assicurazioni Generali, S.P.A.*, No. 10-80 (August 13, 2010).

The basic facts that provide the foundation for The Holocaust Insurance Accountability Act of 2010 are set forth in the congressional findings in section 2 of HR 4596 and should be well known to the members of the Subcommittee. I will focus here, therefore, on the legal matters that have made HR 4596 necessary. At the core of the numerous disputes that underlie HR 4596 are certain “executive agreements” concluded in 2000 and 2001 between the executive branch of the United States and the countries of Germany and Austria. To my knowledge, the executive branch concluded these agreements without any congressional involvement (and certainly without either prior or subsequent formal congressional approval). As relevant to HR 4596, these executive agreements designated the International Commission on Holocaust Era Insurance Claims (“ICHEIC”) to resolve Holocaust-era issues relating to German and Austrian insurance companies. See Congressional Findings, HR 4596, § 2, paras. (7), (8).

The essential legal issue is the extent to which the executive agreements have any force as law in the United States. The agreements made it clear that they did not, by themselves, “provide an independent legal basis for dismissal” of claims of Holocaust victims filed in any courts of the United States. Instead, the executive branch simply agreed to file a “statement of

interest” in such lawsuits to the effect “that U.S. policy interests favor dismissal on any valid legal ground.”

The force of the executive agreements ultimately came before the United States Supreme Court in the 2003 case *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003). But that case related to the narrow issue of whether the executive agreements preempted a specific California state disclosure statute, the Holocaust Victims Insurance Relief Act. The Court in *Garamendi* first reaffirmed the unproblematic proposition that the President may conclude agreements to manage our routine external relations with foreign states without the consent of the Senate under Article II or the approval of Congress under Article I of the Constitution. 539 U.S. at 415. The Court also noted a specific historical practice in which Presidents have concluded such agreements with foreign states for the purpose of creating a forum for the settlement of claims. *Id.* Unfortunately, the Court then observed in immoderate rhetoric that “[g]enerally ... valid executive agreements are fit to preempt state law, just as treaties are.” *Id.*, at 416. It ultimately found that the foreign policy reflected in the executive agreements preempted the California insurance disclosure statute, even though the agreements did not in specific terms purport to preempt state law claims. *Id.*, at 420-429. Legal scholars on constitutional and foreign affairs laws were immediately highly critical of the *Garamendi* opinion’s rhetoric on the unilateral power of the President to preempt state law. *See, e.g.*, Bradford Clark, *Domesticating Sole Executive Agreements*, 93 VA. L. REV. 1573 (2007); Brannon P. Denning and Michael D. Ramsey, *American Insurance Association v. Garamendi and Executive Preemption in Foreign Affairs*, 46 Wm. & Mary L. Rev. 825 (2004); Michael D. Ramsey, *THE CONSTITUTION’S TEXT IN FOREIGN AFFAIRS* 283-299 (Harvard U. Press 2007).

Regrettably, the broad rhetoric of the Supreme Court in *Garamendi* has created a foundation for even greater assertions of a unilateral power of the executive branch to preempt otherwise valid private claims asserted in the courts of the United States. A particularly objectionable case is *In re Assicurazioni Generali S.p.A.*, 592 F.3d 113 (2d Cir. 2010). That case involved a claim against an Italian insurance company. Although there was no relevant executive agreement with Italy of any kind, the court of appeals in *Assicurazioni Generali* found that a mere executive branch statement of “foreign policy” preempted otherwise valid claims of private individuals founded on generally applicable state statutes and common law. 592 F.3d at 118-119. *See also Movsesian v. Victoria Versicherung AG*, 578 F.3d 1052 (9th Cir. 2009)(also relying on statements of executive foreign policy to dismiss an otherwise valid state law claim).

Put simply, these federal court decisions that give preemptive effect *as law* to statements of *policy* by the executive branch (even as reflected in executive agreements) violate fundamental principles of separation of powers and federalism at the core of our Constitution. These fundamental principles make clear that the executive branch may not—without the approval of Congress—make law on its own initiative to eliminate otherwise-enforceable rights of private individuals. My purpose in the paragraphs that follow is, first, to describe how fundamentally the federal court opinions noted above contravene core constitutional principles and, therefore, why the subject is worthy of congressional attention through legislation such as HR 4596. I will then explain that Congress clearly has the power to right this constitutional wrong by blocking any preemptive effect in the future for the unilateral executive branch actions that are the subject of HR 4596.

First, in my view the federal courts’ recognition of unilateral executive actions as preemptive federal law violates fundamental separation of powers principles by making the

President a lawmaker without the approval of Congress. The Constitution established “finely wrought and exhaustively considered” procedures for creating federal law. *Clinton v. New York*, 524 U.S. 417, 440 (1998)(quoting *INS v. Chadha*, 462 U.S. 919, 951 (1983)). Congress, of course, is the preeminent lawmaking institution in this system. It holds “[a]ll legislative Powers herein granted.” U.S. Const., Article I, Section 1. But even in the exercise of these powers, the Constitution imposes significant procedural hurdles for the creation of federal law, hurdles that require either the cooperation of Congress and the President or the approval of a supermajority of Congress. The creation of federal law thus requires either (a) for statutes, the approval of majorities of both of the two separately-elected houses of Congress and of the President (or a supermajority of both houses in override of a presidential veto), or (b) for treaties, the approval of the President and a supermajority of the Senate. *See* Article I, Section 7; and Article II, Section 2. (Of course, executive agencies and similar institutions also may engage in federal rulemaking pursuant to and within the bounds of formal delegations of authority from Congress.)

The Constitution’s “finely wrought” procedures for federal lawmaking also serve important ends of transparency and justice. They ensure that law is made in the open and with the oversight and substantive input of the people’s elected representatives in Congress. The sole executive agreements and statements of “foreign policy” that recent federal court decisions have accorded the force of law, in contrast, are not subject to any of the Constitution’s important procedural protections against arbitrary governmental action. As a result, the very content of the law is subject to the unilateral preferences of executive branch officials from time to time, from subject to subject, and—as we have seen in the recent federal court opinions—even from case to case. Instead of the constitutionally required procedures for the creation of objective legal rules, the “law” exists at the whim of executive branch officials without congressional oversight.

Moreover, because the executive branch has discretion over where and when it will make statements of “foreign policy,” it may—under the radar, as it were—decide to intervene and block individual rights on a case-by-case basis. This type of discretionary “law” does not comport with our constitutional model in which objective rules of law adopted in accordance with prescribed procedures are to be applied on an impartial basis by an independent judiciary.

An example from recent events will illustrate the dangers of this type of discretionary, unilateral executive control over the very content and application of the law. Consider the recent oil spill from the BP Deep Water Horizon drilling platform in the Gulf of Mexico. BP is predominantly a British company whose interests, therefore, may have implications for the foreign policy of the United States. At the urging of the President, BP has made a special fund available for the compensation of victims of the oil spill. It remains very much unclear what procedures and substantive legal standards this *ad hoc* body will establish and apply. At the present time, the fund process does not purport to supersede the rights of individuals to assert their claims in a properly constituted state court. But under the recent federal court rulings, whether this remains true is subject to the policy preferences of the executive branch. If, at the behest of a foreign government, industry groups, BP itself, other interested parties, the executive branch were to determine that state law claims against BP were contrary to the “foreign policy” of the United States, the courts would be empowered to dismiss the court cases on that basis alone. In other words, a mere indication of executive policy, even an informal indication not made by the President himself, could displace the rights of private claimants under state law.

The recent federal court opinions on the subject also do not appear to impose any limits on the kinds of state law subject to discretionary executive preemption in this way. Even longstanding, neutral legal principles of general application (such as traditional common law



contract, tort, and restitution claims) are subject to federal preemption based on executive branch policy preferences. Moreover, in our highly interconnected modern world, virtually any issue could have implications for our nation's foreign policy. As a result, virtually any private rights in any court proceeding could be blocked by unilateral executive branch statements of "foreign policy."

The essential constitutional requirements for the valid creation of federal law also have important consequences for our federal system of government. As a group of concerned law professors recently observed in a brief to the Supreme Court, the Constitution's procedural hurdles "safeguard state interests and protect the Constitution's federal structure, assuring that state laws are not displaced unless multiple federal actors agree that they should be." Brief of *Amici Curiae* of Professors of Constitutional Law and Foreign Relations Law in Support of the Petition for Writ of Certiorari, *Weiss v. Assicurazioni Generali, S.P.A.*, No. 10-80 (August 13, 2010). As a result, state laws, including individual rights founded in state law, are valid and enforceable unless they are inconsistent with the U.S. Constitution itself or with a valid exercise of lawmaking powers conferred on federal institutions by the Constitution. The Supremacy Clause of Article VI thus makes clear that the "supreme Law of the Land" is found only the U.S. Constitution itself, the "Laws of the United States which shall be made in Pursuance thereof," and treaties validly approved by the Senate. U.S. Const., Article VI, cl. 2. In the case of HR 4596, there are no credible claims that the state insurance law rights and claims at issue contravene any formal aspect of the Constitution, any laws made "in Pursuance thereof," or any treaties approved by the Senate as required by Article II, Section 2.

Nothing in this constitutional system gives the force of federal law to the kind of unilateral executive agreements and mere statements of "executive foreign policy" that are the

subject of HR 4596. It is correct, as the Supreme Court stated in *Garamendi*, that “the historical gloss on the ‘executive Power’ vested in Article II of the Constitution has recognized the President’s ‘vast share of responsibility for the conduct of our foreign relations.’” 539 U.S. at 414 (*quoting Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610-611 (1952)(Frankfurter, J., concurring)). But this power exists in relation to our country’s *external* relations with foreign states, not to the unilateral creation of *domestic* law. Indeed, Article II, Section 3, of the Constitution obligates the President to “take Care that the Laws be faithfully executed.” The Supreme Court has emphatically, and repeatedly, declared that this injunction “refutes the idea that [the President] is to be a lawmaker.” *Medellin v. Texas*, 552 U.S. 491, 526-527 (2008) (*quoting Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952)). As the Supreme Court also observed in *Medellin v. Texas* in 2008, quoting James Madison in the *Federalist Papers*, “[t]he magistrate in whom the whole executive power resides cannot of himself make a law.” 552 U.S. at 528.

It is also true that the Supreme Court has, on a small number of occasions, stated that the President may conclude so-called “sole executive agreements” of sufficient moment to preclude direct obstruction by state law. But most recently the Supreme Court has emphasized that such agreements have preemptive force only in “a narrow set of circumstances” founded, significantly, on a “‘particularly longstanding practice’ of congressional acquiescence.” *Medellin v. Texas*, 552 U.S. at 531 (*quoting Garamendi*, 539 U.S. at 415).

The validity even of formal executive agreements with foreign states thus depends decisively on the existence of longstanding approval by Congress. I am not aware of any “particularly longstanding practice of congressional acquiescence” to support unilateral executive agreements, much less mere statements of “executive foreign policy,” with the power

to invalidate state law insurance claims in available state courts. See Bradford Clark, *Domesticating Sole Executive Agreements*, 93 VA. L. REV. 1573, 1618 (2007)(explaining that in the historical practice of claim settlement by executive agreement—on which Supreme Court precedent such as *Garamendi* is based—the executive *created* a settlement forum where “Americans with claims against foreign nations had no recourse” in domestic courts). In my view, therefore, federal courts should not have given effect to the unilateral executive agreements and policy statements to block such state law claims in the first place. In doing so, the courts improperly sanctioned a circumvention of the lawmaking powers the Constitution vests in Congress (or in the President and Senate through Article II treaties). In any event, it is entirely appropriate for Congress now to declare its *actual* intent on the validity of state law insurance claims of Holocaust victims through legislation such as HR 4596.

Finally, Congress certainly would act within its constitutional powers if it were to preclude federal preemption by enacting HR 4596. The Constitution expressly grants to Congress the authority “[t]o regulate commerce with foreign nations.” U.S. Const., Article I, Section 8, cl. 3. In contrast, as I noted above, the President’s obligation “to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker.” *Medellin v. Texas*, 552 U.S. 491, 526-527 (2008). Nor would HR 4596 illegitimately interfere with the executive branch’s responsibilities in the field of foreign affairs. The President indeed has extensive responsibilities in managing our nation’s *external* relationships with foreign states. But the law of the United States—our *domestic* law—is made by Congress in accordance with the prescribed procedures of Article I (or by the President and Senate through the treaty process of Article II). As a more specific matter, the Supreme Court has declared from some of its earliest cases that Congress has the power, for purposes of the domestic law of the United States, to abrogate by statute even a

formal treaty with a foreign country approved by the Senate under Article II. *See, e.g., United States v. Yen Tai*, 185 U.S. 213, 220 (1902) (“Congress may by statute abrogate ... a treaty previously made by the United States with another nation[.]”); *Cook v. United States*, 288 U.S. 102, 119-120 (1933); *Medellin v. Texas*, 552 U.S. 491, 509 (2008). Congress obviously also has the power—subject to possible rare exceptions not relevant here—to supersede a unilateral executive agreement concluded without the sanction of the Senate under Article II or of Congress as a whole under Article I. *See Weinberger v. Rossi*, 456 U.S. 25 (1982) (making clear from its analysis that Congress has the power to supersede an executive agreement through legislation).

In short, in my opinion the circumstances that are the subject of HR 4596 are highly worthy of the attention of Congress. The Constitution designates Congress as the preeminent federal lawmaking institution and establishes specific and detailed procedures for the creation of federal law. The recent federal court decisions discussed above, including the *Garamendi* opinion of the Supreme Court, improperly permit the executive branch to bypass these essential constitutional safeguards and create “law” on the basis of fleeting policy preferences without the express or implied approval of Congress. In any event, it is entirely appropriate for Congress now to reassert its proper authority and declare its actual intent on the enforceability of state law insurance rights and claims by victims of the Holocaust era. Congress also certainly has the constitutional power to do so.

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Mr. COHEN. Thank you, Professor Van Alstine. You have each left us with scary propositions, that these organizations are influenced by money. There is gambling. I am shocked. And your idea of all these executive agreements, those are all scary things.

Our final witness is Ms. Anna Rubin. Ms. Rubin is the director of the Holocaust Claims Processing Office of the New York State Banking Department.

Since joining the Holocaust Claims Processing Office in 2001, she has worked directly with Holocaust survivors and their heirs, seeking a measure of just resolution for the theft of assets during the reign of the Nazi regime. Through consultation with high level officials from numerous international and domestic compensation organizations and partner entities, Ms. Rubin developed systems for and coordinate submission of claims from over 5,000 individuals located in 45 states and 38 countries.

She frequently represents the HCPO at conferences and events, both locally and abroad, that focus on matters related to looted assets and restitution. And she got a nice compliment from the ambassador and gave a wonderful smile that he didn't see.

Thank you, Ms. Rubin. Will you proceed with your testimony?

**TESTIMONY OF ANNA B. RUBIN, DIRECTOR, HOLOCAUST CLAIMS PROCESSING OFFICE, NEW YORK STATE BANKING DEPARTMENT**

Ms. RUBIN. Good afternoon, Chairman Cohen, Ranking Member Franks and Members of the Committee. Thank you for the opportunity to appear before you today and share my knowledge on the important issue of Holocaust-era insurance claims. As director of the Holocaust Claims Processing Office, a joint venture of the New York State Banking and Insurance Departments, I am pleased to be able to provide insight into New York State's efforts to provide some measure of justice to the victims of a painful chapter in world history.

For over 13 years, the state of New York has been at the forefront of ensuring a just resolution of unresolved claims for assets lost due to Nazi persecution, and in June 1997 established the HCPO. Claimants pay no fee for the HCPO's services, nor does the office take a percentage of the value of the assets recovered. Our goal is to advocate for claimants by helping to alleviate any costs and bureaucratic hardships they might encounter in trying to pursue claims on their own.

Since its inception, the HCPO has assisted over 2,300 individuals from 43 states and 24 countries in making claims for insurance policies. To date, the combined total of offers extended to HCPO claimants amounts to more than \$154 million, \$31 million of which is compensation for insurance policies.

In response to the complex nature of restitution claims, the HCPO employs a four-step method to handle cases. First, the HCPO undertakes general historical research to corroborate and contextualize information specifically regarding the insurance industry in pre-war Europe, the results of which have shown that Germany, with the largest pre-war insurance market in Continental Europe, also had the most comprehensive post-war compensation program.

In contrast, Poland, the country with the largest number of victims of Nazi persecution, played a relatively minor role in the industry. Realistic expectations of what policy-specific information can be found in both archives and company records must take this backdrop into account.

The past 10 years has seen the publication of hundreds of thousands of potential policyholder names from both company records

and public archives. The HCPO uses this information, in conjunction with research in domestic and international public and private archives, to obtain documentary evidence. This has proven critical to resolving claims.

Second, the HCPO determines where to file a claim, meaning what present-day company or process is responsible for the policy. For claims for policies issued by companies still in existence, finding the appropriate successor is relatively straightforward. But for others, determining the successor is more complex. Indeed, in many cases, there is no present-day successor.

Third, relying on relaxed standards of proof, claims are submitted to all available venues. Under these commonly accepted evidentiary standards, which are not as stringent as those generally employed in court, the claim cannot be rejected on the grounds that the claimant lacks complete documentary evidence.

With the implementation of international agreements mentioned earlier, the HCPO transferred thousands of claims to a variety of processes. In March 2007, with the closing of ICHEIC, its member companies, as well as members of the German Insurance Association, the vast majority of which are beyond the reach of the U.S. judicial system, reiterated their commitment to continue to review and process claims under ICHEIC's relaxed standards of proof.

The HCPO continues to deal directly with insurance companies to successfully resolve outstanding claims. The fourth and final step in the HCPO process involves evaluating decisions to ensure that they adhere to agreed-upon processing guidelines.

Like the missing property we search for, no two claims are alike. Each requires conscientious individual attention and painstaking effort, a task greatly helped by increased archival and library cooperation and the company's continued willingness to review claims.

The process of restitution is difficult and distressing for claimants. However, the HCPO has successfully brought closure to survivors and their heirs. The HCPO's non-litigious approach to claims resolution shows that it is possible to obtain compensation for assets lost during the Holocaust era through open and mutual cooperation and at no cost to claimants.

In closing, permit me to suggest that, as we strive to achieve our common goal to settle claims for Holocaust-era looted assets as sensitively and as swiftly as possible, it behooves us all to manage claimants' expectations and not raise an exaggerated sense of what might be accomplished through litigation.

Thank you again for this opportunity, and I would be happy to address any questions you might have.

[The prepared statement of Ms. Rubin follows:]

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PREPARED STATEMENT OF ANNA B. RUBIN

**Testimony of**

**Anna B. Rubin**

**Director**

**Holocaust Claims Processing Office**

**New York State Banking Department**

**House of Representatives**

**Committee on the Judiciary**

**Subcommittee on Commercial and Administrative Law**

**September 22, 2010**

Good morning Chairman Cohen, Ranking Member Frank, and Members of the Subcommittee. Thank you for the opportunity to testify before you today and share my knowledge on the very important issue of Holocaust-era insurance claims. As Director of the Holocaust Claims Processing Office (HCPO), I am especially pleased to be able to provide some insight into the work of New York State in its attempt to provide some measure of justice to the victims of a painful chapter in world history. Today I would like to provide you with background on the HCPO and in particular our experience working on Holocaust-era insurance claims, our cooperation with numerous compensation organizations, and our recent efforts to assist individuals with outstanding claims.

#### **I. Introduction to the Holocaust Claims Processing Office**

For over 13 years New York State has been at the forefront of efforts to ensure a just resolution of unresolved claims for assets lost due to Nazi persecution. As you are undoubtedly aware, in the late 1990s, disputes over Holocaust-era dormant Swiss bank accounts and unpaid life insurance policies focused international attention on a myriad of issues concerning unresolved claims for assets lost during the Holocaust-era. During those early days, before settlements and claims processes, New York State recognized the need for an agency to assist individuals attempting to navigate the emotionally charged maze of Holocaust-era asset restitution and, as a result, established the Holocaust Claims Processing Office as a division of the New York State Banking Department in June 1997.

On July 8, 1998, the New York State Legislature, in keeping with the State's commitments to assist Holocaust victims and their heirs, added Article 27, "Holocaust Victims Insurance Act of 1998" to the New York Insurance Law.<sup>1</sup> This legislation requires New York State insurers affiliated with insurance companies that did business in areas under Nazi influence during the Holocaust-era to file annual reports and to resolve all unpaid insurance policies issued to Holocaust victims. Most importantly the act provides for assistance to Holocaust victims and their heirs who have insurance claims resulting from losses suffered due to discriminatory laws, policies or actions between 1933 and 1945.

The HCPO was initially intended to assist individuals hoping to recover assets deposited in Swiss banks. It soon became apparent that claimants also needed help recovering a range of

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<sup>1</sup> NY CLS Ins Article 27, Holocaust Victims Insurance Act of 1998



other property and by the end of its first year of operation, the HCPO expanded its mission to assist in the recovery of assets held in non-Swiss banks, proceeds from Holocaust-era insurance policies, and works of art that were lost, looted, or sold under duress between 1933 and 1945. The HCPO is jointly funded by the New York State Banking Department and the New York State Insurance Department.

Shortly after the creation of the HCPO and passing of New York's "Holocaust Victims Insurance Act of 1998", numerous agreements allocating funds for restitution were reached, and processes to disburse payments were established.<sup>2</sup> However, no roadmap existed to guide the newly created restitution organizations in setting parameters by which they could accomplish their missions. Thus a network of frequently overlapping claims processes developed and was so complex that it became nearly impossible for an individual claimant to proceed unaided.

The HCPO is the only government agency in the United States that assists individuals, regardless of their place of residence, to file claims with a variety of multinational restitution processes. Claimants pay no fee for the HCPO's services, nor does the HCPO take a percentage of the value of the assets recovered. To date, the combined total of offers extended to HCPO claimants for bank accounts, insurance policies, and other asset losses amounts to more than \$154 million, \$31.5 million of which is compensation for insurance policies. Additional information about the work of the HCPO, including past speeches and presentations, annual reports, and claim forms is available online at <http://www.claims.state.ny.us/index.htm>.

The goal of the HCPO is to advocate for claimants by helping to alleviate any cost and bureaucratic hardships they might encounter in trying to pursue claims on their own.

## II. The HCPO's Insurance Claims

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<sup>2</sup> Take for example the Holocaust Victim Assets litigation in the U.S. District Court for the Eastern District of New York, Chief Judge Edward R. Korman presiding, and the Claims Resolution Tribunal ("CRT"); the Washington Agreement between the United State and France and the Commission for the Compensation of Victims of Spoliation Resulting from the Anti-Semitic Legislation in Force during the Occupation ("CIVS"); the Memorandum of Understanding, between European insurers, United States insurance regulators and others, and the International Commission on Holocaust Era Insurance Claims ("ICHEIC"); the Foundation "Remembrance, Responsibility, and the Future" (German Foundation) and the Property Loss Claims Commission as well as Slave and Forced Labor programs; the Washington Agreement between the United State and Austria and the General Settlement Fund ("GSF"); the Enemy Property Claims Assessment Panel ("EPCAP"); and the Belgian Jewish Community Indemnification Commission. These are but a few of the agreements and claims processes which were created at the end of the 1990s and early 2000s.

To date, the HCPO has handled nearly 4,400 insurance-related inquiries (out of more than 13,000 total inquiries), from individuals in 48 states, the District of Columbia, and 34 countries. These inquiries have generated 2,305 claims, primarily for life, dowry, and endowment insurance policies.

The number of insured persons and insurance policies exceeds the number of claimants; the 2,305 insurance claims are for 5,348 policies and 3,279 insured persons. In many instances, individuals had multiple insurance policies, often with different companies; in other cases, the claimant is the sole survivor of a large family.

In response to the complex nature of restitution claims, the HCPO gradually developed a systematic method, broadly described in four steps, to handle cases. First, individual claims are assigned to members of the HCPO's staff who assist in securing the necessary genealogical and historical documentation to ensure viability of the claim. Second, the HCPO determines where to file the claim(s). Third, the HCPO submits the claim to the appropriate company or claims process. Finally, the HCPO reviews the decision rendered on the claim to ensure that it adheres to published processing guidelines, assists with appeals when necessary, and guides claimant's through the payment process when awards are offered.

### **III. HCPO Research**

#### **A. General Historical Research**

The HCPO undertakes general historical research to support the Superintendent of Insurance and his General Counsel with Holocaust-era insurance related activities. Moreover, such research corroborates and contextualizes the information the HCPO shares with claimants, claims processing organizations, and companies.

In the context of today's discussion, the HCPO undertook a study of the prewar European insurance market utilizing statistics on direct premium income (the industry standard used to measure market share) in 1936. Analyzing market share provides a tool to determine the comprehensiveness of restitution efforts both past and present, while studying the size of the market as a whole provides a perspective on the number of potential unpaid Holocaust-era policies, i.e. the smaller the market, the fewer policies overall, and therefore, the fewer policies that potentially remain to be paid today.

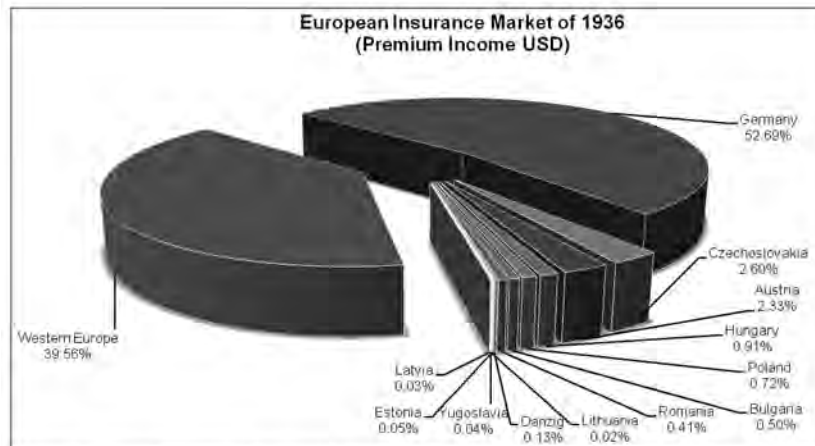


Figure 1 –Western Europe includes Belgium, Denmark, France, Italy, Netherlands, and Norway, countries that were subsequently occupied by the Nazis.

The results illustrate that the domestic German market was by far the largest in continental Europe in 1936. In contrast, the domestic markets in other Central and Eastern European countries, even in Czechoslovakia, the most industrialized of those states, were significantly smaller. For example, the aggregate market share of the combined domestic markets of Austria, Hungary, Czechoslovakia, Poland, Bulgaria, Yugoslavia, Romania and the Baltic countries was approximately 7.6% of the total market, although their combined populations comprised over 100 million in comparison to Germany's 66 million.

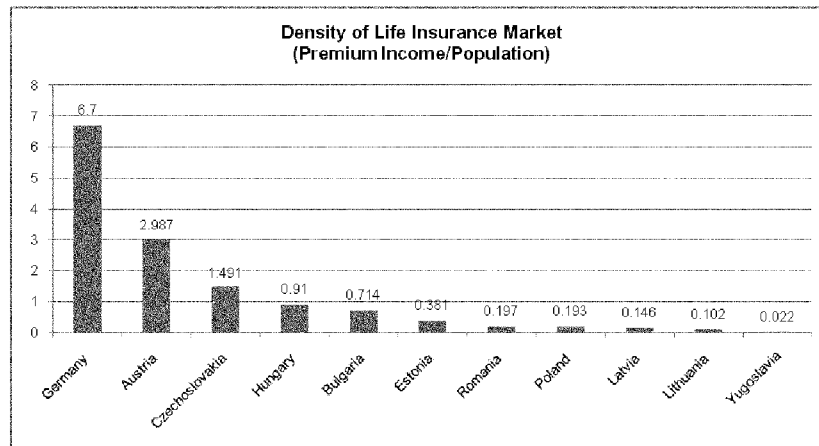


Figure 2 – This chart shows the difference in premium payments between Central and Eastern European countries as related to the size of population (as of the last official census figures as of 1936). The figures for each country represent the amount in 1936 US Dollars each person would have paid in life insurance premiums.

This research has also confirmed the relatively underdeveloped state of the Eastern European insurance market at the time. Relative to population, the insurance markets in these countries were substantially smaller than those in their West European counterparts. Poland, the most populous country in Eastern Europe other than the USSR, had one of the smallest markets, both in terms of market share and per capita insurance. According to the figures reported in the 1936 *Assekuranz Jahrbuch*,<sup>3</sup> the total number of life insurance policies in force in Poland, whose population exceed 32 million people, was 257,684; most of those (over 48%) were written by the PKO, one of three public life insurance companies, while Generali only reported 13,475 policies (about 5% of the Polish life insurance market).

Trying to assign an overall present-day US dollar value to the prewar European insurance market is highly contingent on the chosen valuation method (e.g. consumer-price index; thirty-year Treasury bond yields). Nevertheless, in order to provide a reference point in present-day terms, we used ICHEIC's valuation guidelines to calculate the value of the 1936 direct premium income across the European market. This method of converting 1936 dollars to present-day

<sup>3</sup> The *Assekuranz Jahrbuch* was an annual insurance industry periodical, which compiled statistics provided by national insurance regulatory agencies.

sums, unlike using the US Consumer Price Index or long bond rates, takes into consideration the deflation suffered by most European currencies after 1945. The total value of the 1936 market in 1936 US dollar (converting the 1936 local currency to the 1936 US dollar using the end of year exchange rates for 1936) yield a market valued at approximately \$908 million dollars. We applied ICHEIC's valuation guidelines to the 1936 sums, using the most generous multipliers for each country<sup>4</sup>, to bring them up to December 2006 values, as this was the final date for ICHEIC decisions. The calculation yielded a December 2006 value of the prewar market at just over \$13 billion.

Victims of Nazi persecution made up a small percentage of the prewar population of the largest European insurance market (Germany, 0.5%); moreover, the country with the largest percentage of Nazi victims (Poland) had a relatively small and underdeveloped insurance market. It is therefore unlikely that billions of dollars worth of insurance policies belonging to victims of Nazi persecution remain unpaid, particularly after the extensive compensation programs of the 1950s and 1960s as well as modern-day processes such as ICHEIC, the Austrian General Settlement Fund and other entities discussed below.

#### **B. Research on Behalf of Claimants**

In addition to general historical research, the HCPO also undertakes claimant specific research. Claims received by the HCPO range from the partially or even fully documented to the purely anecdotal.

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<sup>4</sup> Using a less generous ICHEIC multiplier based on the year of the insured event the calculation yielded a total value (as of December 2006) of \$6.2 billion, demonstrating how contingent assignment of present-day value is on the method employed.

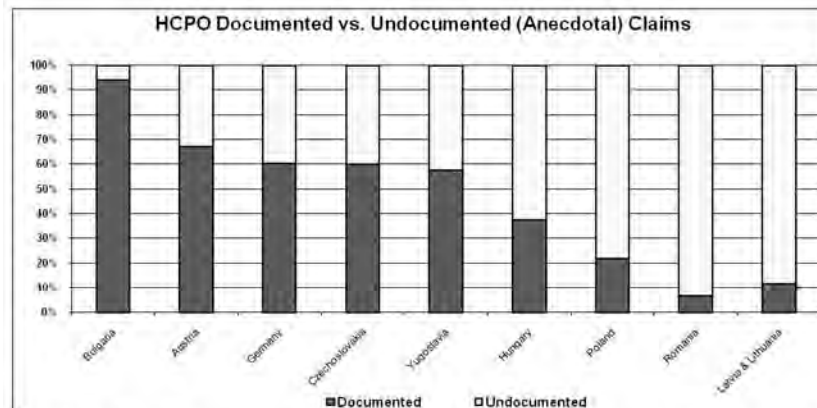


Figure 3 – This chart only represents a fraction of the claims received by the HCPO as claims from West European countries have also been submitted to the office.

Some claimants are able to furnish documentation such as the actual policy or premium receipt; handwritten lists kept by families that itemized their assets; and prewar and wartime confirmation letters from insurance companies referencing policy numbers and policies. In other instances, claimants document policy ownership through Nazi-era asset declarations; in some cases policy ownership is revealed by postwar compensation files. However, to date, 46% of the claims filed with the HCPO are purely anecdotal, relying solely on the claimants' recollection of the existence of a policy.

While claimant recollection is a starting point to assess the viability of a claim, in order for the HCPO to move forward with the restitution process, some documentation is needed. Fortunately, claims processes, unlike courts, adopted and apply **relaxed standards of proof** for Holocaust-era claims, because they acknowledge that the passage of time and ravages of war left many individuals without documentation to substantiate their claims.

For example, under the Processing Guidelines of the International Commission on Holocaust Era Insurance Claims (ICHEIC), claimants were allowed "to provide non-documentary and unofficial documentary evidence for assessment," while companies were "not to demand, unreasonably, the production of any document or other evidence which has likely been

destroyed, lost, or is unavailable to the claimant.”<sup>5</sup> Similarly, the standard adopted by German Foundation Property Loss Claims Commission did not require claimants to submit the stringent evidence that a court of law would demand; instead, claimants were only expected to “credibly demonstrate” what they were asserting.<sup>6</sup>

Though the definition of relaxed standards of proof differs from one entity to the next, they fundamentally all endorse the same principle: a claim cannot be rejected on the grounds that the claimant lacks complete documentary evidence. The application of relaxed standards of proof protects the claimant from unreasonable demands for documentation that is impossible to obtain or may simply no longer exist, such as certain vital records.

Alternatively, in court, even if a claimant were to overcome numerous technical impediments such as jurisdiction and statute of limitations, those with only anecdotal claims would still face evidentiary obstacles that discovery alone could not resolve. For example, in the absence of documentary proof, claimants do not always know the name of the company from which the insurance policy was purchased. However, paucity of recollection is not always a barrier to the HCPO’s ability to assist the individual, nor was it a barrier to filing a claim with ICHEIC.

Contrary to how a claimant would have to proceed in a court of law, naming the company/defendant at the outset, under the ICHEIC process claimants were not expected to name a company and in fact many did not. Claimants who filed with ICHEIC but did not name a company had their claim circulated to all companies that sold insurance in the listed country of purchase. If a match was made the claim went from an unnamed claim to a named claim. If a match was not found, the claim was then forwarded to the 8A1 humanitarian process for consideration. It is still possible to submit a claim that does not name a specific insurer, as both the German Insurance Association (GDV) and the HCPO, will circulate the claims to all relevant companies.

<sup>5</sup> “Holocaust Era Insurance Claims Processing Guide, First Edition – June 22, 2003.” International Commission on Holocaust Era Insurance Claims. <[http://www.icheic.org/pdf/ICHEIC\\_CPG.pdf](http://www.icheic.org/pdf/ICHEIC_CPG.pdf)> For additional information on ICHEIC’S Relaxed Standards of Proof please see “Standards of Proof, July 15, 1999.” International Commission on Holocaust Era Insurance Claims. <[http://www.icheic.org/pdf/ICHEIC\\_SP.pdf](http://www.icheic.org/pdf/ICHEIC_SP.pdf)>

<sup>6</sup> “Supplemental Principles and Rules of Procedure.” Property Claims Commission. German Forced Labour Compensation Programme Remembrance, Responsibility and Future. <[http://www.compensation-for-forced-labour.org/content/PCC\\_rules\\_e\\_final.pdf](http://www.compensation-for-forced-labour.org/content/PCC_rules_e_final.pdf)>.

Let me give an example: An HCPO claimant, originally from Vienna, was relatively certain that his father's life insurance policy was purchased in Vienna and written by Der Anker or Phoenix; a reasonable assumption, given the market share of these companies in prewar Austria. Neither Der Anker nor Austria Lebensversicherung (the Phoenix successor) had any record of such a policy. The HCPO then researched the tax records of the policyholder, and his file at the Austrian State Archives revealed that the policy had actually been purchased with Victoria. Indeed, the file even cited the repurchase value in July 1938. Because Victoria is a member of the GDV, the claim was submitted through ICHEIC, and the documentation obtained by the HCPO satisfied the relaxed standards of proof established by ICHEIC.

Thus, archival research has proven to be a key component to resolving unpaid insurance claims and is a primary aspect of the HCPO's work. Individual claims are assigned to members of the HCPO's staff who provide assistance in a variety of ways. They assist in securing documentation through research in domestic and international public and private archives. Indeed, from the outset the HCPO works with city and state archives, probate offices, and religious communities all over the world to obtain vital records -- birth, death and marriage certificates -- as well as last wills and testaments, for as aside from lacking documentary evidence of asset ownership, many Holocaust survivors possess little or no documentation regarding their families.

As a result, the HCPO has cordial working relationships with archives, historical commissions, financial institutions, trade associations, and governmental colleagues at the federal, state, and local levels in many different countries. This network enables the HCPO to research prewar, Nazi-era, and postwar documentation to obtain evidence about an individual's asset ownership, details of the dispossession, and prior attempts at recovery.

Although lack of documentation may make a claim far more difficult to research it does not necessarily mean a claim cannot be pursued. Another example is the case of Mr. P.L., a Holocaust survivor born in Czechoslovakia. Mr. P.L. sought recovery of the life insurance policies of his father, Mr. R.L., the owner of a metal works factory who was arrested by the Nazis following their occupation of Czechoslovakia in 1939. Mr. R.L. was deported to Mauthausen concentration camp where he perished in 1940. Mr. P.L. was able to flee Czechoslovakia and made his way to Australia. Mr. P.L. had no documentation concerning his family's looted assets, but believed that his father had taken out insurance with a Swiss



insurance company. The HCPO forwarded Mr. P.L.'s anecdotal insurance application to ICHEIC.

Following this submission, the HCPO continued to research Mr. P.L.'s claim, writing to various insurance companies and to the relevant archives in Brno requesting information about Mr. P.L.'s family. The archives produced extensive records which showed, among other looted family assets, a life insurance policy with the now-defunct Phoenix insurance company. While the archival documents did not contain terms of the policy (e.g., dates, duration), they did indicate the sum insured was 220,000 KCS.

The HCPO forwarded this documentary evidence of the existence of a policy to ICHEIC. Because there is no present-day successor to the Czech Phoenix insurance company, ICHEIC made an award to Mr. P. L. from its 8A2 Humanitarian Fund, which was set up to pay policies issued Eastern European companies that were nationalized or liquidated after World War II and have no present-day successors. In addition to Mr. P.L.'s father's Phoenix policy, 234 other insurance policies claimed by HCPO claimants and issued by companies without present-day successors were paid through ICHEIC's 8A2 process.

#### **IV. HCPO Submission of Claims to Appropriate Entities**

With as much information in-hand as possible regarding the claimants' insurance policies, the HCPO begins the second stage of the restitution process – determining where to file the claim. In order to submit a claim to the appropriate company or claims process, it is necessary to first determine what present-day company or claims process is responsible for the policy in question. For claims for policies issued by companies still in existence, finding the appropriate successor is relatively straightforward. But for others, determining the successor is more complex.

A considerable amount of the HCPO staff's time is therefore devoted to successor company research. Researching successor companies is complicated by the following facts: policies written in contested geographical areas were transferred to a variety of companies and different portfolios within these companies; the prewar Nazi consolidation of the insurance industry and the postwar reconstruction; and in some instances nationalization of the industry led to further changes in corporate structures. Moreover, many companies are left with little or no documentation regarding their prewar holdings or the holdings of their subsidiary companies.

Published industry handbooks and government statistical bulletins from the relevant time period help the HCPO determine where companies did business and provide some information regarding the aggregate statistics of the prewar insurance market as well as the market share of individual companies. For example, it is possible to state with some certainty which companies sold life insurance policies in Germany and Poland in 1936.

Once all of the HCPO's research is complete, our role changes from detectives to advocates and facilitators, launching the third phase of the claims process. The HCPO staff submits claims to all appropriate companies, regulatory authorities, governments, and any independent organization established to resolve these claims.

#### **A. The International Commission on Holocaust Era Insurance Claims**

The International Commission on Holocaust Era Insurance Claims (ICHEIC) was established in October of 1998 by the National Association of Insurance Commissioners in cooperation with several European insurance companies, European regulators, representatives of several Jewish organizations, and the State of Israel. ICHEIC was charged with establishing a process to address the issue of unpaid insurance policies owned by victims of the Holocaust. To accomplish this task, ICHEIC entered into agreements with European insurers and created mechanisms by which the Commission was able to identify, settle, and pay individual Holocaust-era insurance claims, at no cost to claimants, using relaxed standards of proof. With the launch of ICHEIC's claims process in February 2000, the HCPO transferred over 2,100 insurance claims to the Commission for settlement. The HCPO worked closely with ICHEIC staff in Washington and London, participated in working groups, provided technical assistance and ensured claimants' concerns were adequately addressed.

#### **B. The Austrian General Settlement Fund**

The Austrian General Settlement Fund (GSF) Law of 2001 created the legal basis for dealing with the financial claims of Holocaust victims. The Austrian Insurance Association and its member companies passed a unanimous resolution in April 2001 to contribute \$25 million to the GSF. The GSF has assumed the task of processing the insurance claims of Holocaust victims and their heirs. The HCPO has submitted claims on behalf of over 360 claimants either directly or through the GSF's partnership with ICHEIC. The HCPO continues to monitor these claims and conduct additional research.

### **C. Other Claims Processes**

In addition, HCPO insurance claims have been forwarded to a number of other entities for resolution, including the Generali Fund in Memory of the Generali Insured in East and Central Europe Who Perished in the Holocaust (GTF), the Holocaust Foundation for Individual Insurance Claims (Sjoa Foundation), the Claims Resolution Tribunal (CRT), and the Belgian Jewish Community Indemnification Commission (Buysse Commission). Claims were submitted to these organizations either in accordance with ICHEIC's partnership agreements with these entities or directly by the HCPO.

### **D. Assicurazioni Generali S.p.A.**

Though three class action suits brought in the United States District Court Southern District of New York against Assicurazioni Generali S.p.A.<sup>7</sup> (Generali) were dismissed with prejudice by the Court on October 14, 2004, the parties entered into the Settlement Agreement on August 25, 2006 which was finalized and approved on January 7, 2008. The deadline for submitting a claim to Generali's Policy Information Center (PIC) in Trieste, Italy was December 31, 2007; however, the deadline for submitted claims based on documents obtained from ITS was extended to August 31, 2008. The HCPO submitted 81 claims to the PIC for resolution.

### **E. Insurance Companies Before and After ICHEIC**

Prior to the establishment of ICHEIC, the HCPO submitted claims for insurance policies directly to the issuing insurance company or its present-day successor, if one could be located. At ICHEIC's final meeting in March 2007, all ICHEIC member companies, as well as over 70 companies in the German Insurance Association (GDV), through its partnership agreement with ICHEIC, reiterated their commitment to continue to review and process claims, including those where a specific insurer is unnamed, sent directly to them in accordance with ICHEIC's relaxed standards of proof. Since ICHEIC ceased operations at the end of March 2007, the HCPO has once again resumed dealing with insurance companies directly to resolve outstanding claims.

Since ICHEIC closed in March 2007 the HCPO has received approximately 75 insurance claims inquiries. This number of inquiries is consistent with 129 submitted directly to the GDV (the GDV publishes post-ICHEIC claims statistics on their website at <https://secure.gdv.de/entschaedigung>). Of the HCPO's post-ICHEIC inquiries eight claims were

<sup>7</sup> *In re: Assicurazioni Generali S.p.A. Holocaust Insurance Litigation* Docket No. 05-5602, et al. filed in the United States District Court for the Southern District of New York.

sent to the GDV, six were sent to Generali, one was sent to the Italian State Insurance Authority, and several more are pending investigation.

Unfortunately, for a variety of reasons not all claims are eligible for restitution through present-day programs: no record of the policy can be located either within company records or in archives; the policy in question lapsed prior to the start of the Holocaust-era; the policy was issued by a company for which there is no present-day successor; the policy were previously compensated under claims processes enacted in the immediate postwar period.

Over a decade working with different restitution processes has sensitized the HCPO to the dangers of duplication of efforts. It has been our experience that claimants will pursue all means possible to recover lost assets and to that end submit applications for the same assets to multiple venues. Indeed, many of the inquiries the HCPO has received since March 2007 have already been settled through prior compensation efforts, including ICHEIC. In the absence of new documentation, submission of a claim for the same policies would likely yield the same outcome. The companies, who were independently audited, would review the same files again and claimants would invest time, money, and emotional capital to achieve the same result. We must therefore manage claimants' expectations and not raise an exaggerated sense of what might be accomplished through litigation.

#### **V. Resolution of Claims**

The final stage of the process commences once a company or claims process has completed its review of a claim and reaches a determination. At this juncture, the HCPO reviews the decision to ensure that it adheres to that entity's published processing guidelines. Since claimants may lose track of all the claims they have submitted, and since each agency has unique and often complex guidelines, the HCPO helps claimants to understand these guidelines in order to interpret decisions.

In the event that a claimant disagrees with a company or claims process' determination of his or her claim, the HCPO guides claimants through appealing the decision and offers whatever further assistance possible. Alternatively, when claimants receive positive decisions that include monetary awards, the HCPO facilitates payment by explaining the various release and waiver forms and by following up with the claims agency to confirm payment.

Although each case is unique and highly fact dependant, the HCPO consistently approaches all of its restitution cases with moral certitude and handles each case with sensitivity in light the suffering endured by claimants and their families. The HCPO encourages all parties to seek resolution outside the courts as there are many reasons to avoid litigation: lengthy process, stringent evidentiary rules, conflict of laws, attorney's fees which can exceed the value of the asset, statute of limitations, and unpredictable outcomes. Moreover, litigation can be a public and emotionally wrenching affair. Instead, the HCPO facilitates cooperation between parties through open and amicable discussion and by sharing all supporting documentation. We seek to resolve each case in a just, prompt and fair manner relying on moral persuasion and historical and current international principles of restitution.

#### **VI. Conclusion**

No system – be it a voluntary program or the courts – can resolve all the wrongs done during the Holocaust.

Working directly with claimants over the past 13 years has provided the HCPO with a unique vantage point. As we continue to assist individuals find some measure of justice we have learned that not every resolution of a claim depends on the recovery of an asset or monetary settlement. Success can consist of obtaining closure for a claimant, for example, by providing documentation that shows earlier compensation of the property.

Like the missing property we search for, no two claims are alike; each requires conscientious individual attention and painstaking effort. The process of restitution is difficult and distressing for claimants; however, the HCPO's successes show that compensation for assets lost during the Holocaust-era is still possible. New legislation will likely not achieve the closure our elderly claimants are seeking. The HCPO's experience has shown that thoughtful research in conjunction with utilizing the mechanisms currently in place to process claims can minimize the difficulties suffered by claimants in dealing with matters of Holocaust-era asset compensation.

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Mr. COHEN. Thank you, Ms. Rubin. And like the old game show before your time, Bud Collyer, you beat the clock. Thank you.

We have been asked by a group that comes together under the umbrella of the American Gathering of Jewish Holocaust Survivors and the descendants of President Sam Bloch to enter some papers into the record. They are testimony that would have been given by

the American Jewish Committee of the Anti-Defamation League, B'Nai Brith International, Conference of Jewish Material Claims Against Germany, World Jewish Congress, World Jewish Restitution Organizations. And without objection, they will be entered into the record.

[The information referred to follows:]



AMERICAN GATHERING OF JEWISH HOLOCAUST SURVIVORS  
AND THEIR DESCENDANTS

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JEANETTE FRIEDMAN

June 22, 2010

Honorable John Conyers, Jr.  
Chairman, Committee on the Judiciary  
2426 Rayburn House Office Building  
Washington DC 20515

Dear Chairman Conyers,

The American Gathering of Jewish Holocaust Survivors and Their Descendants affirms its unequivocal support of the right of Holocaust survivors to pursue claims of moral and material restitution in every appropriate venue. In this regard, we would welcome legislation that strengthens and advances such rights with respect to insurance and other restitution claims. While there are positive aspects to HR4596, we believe it to be flawed in that it appears to be principally motivated by the avarice of lawyers and in that it raises unrealistic expectations in the survivor community. We look forward to working with Members of Congress to draft proper legislation that truly advances the cause and interests of survivors.

Sincerely yours,

Sam Bloch  
President

**Testimony of:**

**AMERICAN JEWISH COMMITTEE  
ANTI-DEFAMATION LEAGUE  
B'NAI B'RITH INTERNATIONAL  
CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY  
WORLD JEWISH CONGRESS  
WORLD JEWISH RESTITUTION ORGANIZATION**

**to the  
House Judiciary Subcommittee  
on Commercial and Administrative Law  
September 22, 2010  
Washington, DC**

As Jewish community organizations engaged in advocating for justice for victims of the Holocaust, we appreciate the Judiciary Committee's careful consideration of the issues raised by the Holocaust Insurance Accountability Act. Congress has played a vital role over the years in seeking ways to help mitigate the suffering endured by survivors of the Holocaust and help address the mass theft of their property, as well as ensure that the Holocaust is not forgotten.

Our community, like the U.S. Government, continues to struggle to develop solutions – in the face of nearly insurmountable obstacles – to obtain compensation for the suffering during the Nazi era, to obtain restitution and/or compensation for confiscated Holocaust era assets, and to obtain humanitarian funds, for the hundreds of thousands of Nazi victims in need worldwide, as quickly as possible. These efforts have resulted in a number of agreements and claims mechanisms, such as the Swiss Banks Settlement, the German Foundation “Remembrance, Responsibility and Future” and the International Commission on Holocaust Era Insurance Claims (“ICHEIC”).

With respect to insurance, during and for decades after World War II, a virtual vacuum existed in insurance restitution efforts. The absence of relevant documentation, the reluctance of insurance companies to address the issue of Holocaust era policies, and the nationalization or disappearance of many European insurance companies meant there was no effective way for survivors to obtain payment for their Holocaust era insurance claims.<sup>1</sup> Such circumstances are precisely why ICHEIC was established – to provide a device which enabled claimants to receive some measure of justice which, up to that point, had not existed. Specifically, ICHEIC built a process to pay Holocaust era insurance claims issued by five main European insurers, their

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<sup>1</sup> There was one important exception. Under the German Federal Indemnification Law (*Bundesentschädigungsgesetz* or *BEG*), it was possible to obtain compensation for Holocaust era confiscated insurance policies issued by German insurance companies.



subsidiaries, and German and Dutch insurance companies. Representatives of Jewish organizations, major survivor organizations, and bodies such as the National Association of Insurance Commissioners joined in a years-long effort to develop a claims process and meaningful guidelines, as well as to identify policy holders. Notwithstanding the endless impediments which confronted such an effort, in the end, ICHEIC paid out over \$300 million in insurance-related payments to tens of thousands of survivors and heirs of Holocaust victims, and an additional \$200 million primarily for assistance programs, including homecare, for survivors in need.

Any consideration of remedies for the damage perpetrated during the Holocaust – including the issue of unpaid Holocaust-era insurance policies – starts with the painful knowledge that nothing can erase the murder of the millions of Holocaust victims and the loss and suffering of those who survived and their families. At the same time, imperfect as they are, negotiated agreements have provided critical assistance to many who waited far too long for some measure of justice, in their lifelong challenge of coping with the unimaginable horrors they were forced to endure.

Without question, Congressional and State regulatory action played a meaningful role in placing these issues on the public's agenda, highlighting the gross injustices survivors faced, and pressuring governments and corporations to face this most reprehensible chapter in history. At the same time, there can be no doubt that the promise of legal peace for those who participated in these negotiations was critical to achieving the agreements which were reached. And, as a result, hundreds of thousands of Nazi victims and their heirs have been able to secure a measure of justice for the abominable wrongs of the Nazi era.

Despite the admirable goals of H.R. 4596, we have serious concerns that the proposed bill is not only unwarranted, but that its enactment could be detrimental to the interests of survivors, delaying and/or jeopardizing tangible efforts to provide support for them. Attached is a Memorandum on the draft legislation and the concerns it raises (Appendix A), as well as a document that walks through the “catch 22” this legislation poses for survivors (Appendix B). In sum, advancing the proposed legislation would:

- ***Raise false expectations for survivors.*** Encouraging bringing lawsuits based on insurance policies issued in Europe, over 70 years ago, does not ensure that a single Holocaust victim will see a positive result. Not many claimants are in a position to begin long and costly litigation and those few that might be will face significant legal obstacles related, among other matters, to burdens of proof and evidence. In addition, regarding the disclosure provisions of the bill, even were insurers able to overcome the strict European data privacy laws, the release of unfiltered information, on potentially millions of insurance policies, would further raise hopes, but yield little new information.
- ***Compromise the ability of the U.S. to advocate for survivor benefits and issues.*** This legislation effectively repudiates or reopens prior agreements. The U.S. plays an essential role in ongoing negotiations with a number of countries and the enactment of
- H.R. 4596 will raise profound questions about the U.S. ability to abide by its commitments.

- ***Potentially hinder the continuation and expansion of crucial funding.*** Trust and good faith are key components of discussions relating to other open issues and efforts to expand voluntary funding for critical services, such as home health care for ill and aging survivors. These funds amount to hundreds of millions of dollars.

Nearly one-half of the estimated half million Holocaust survivors in the U.S. and abroad today live in poverty – with many being disabled – and continue to be in urgent need of a wide range of assistance. The undersigned organizations have come together to jointly raise these concerns with the Subcommittee as H.R. 4596 is unlikely to yield results, by any significant measure, comparable to the tangible benefits survivors already – and, hopefully, will continue to – receive from foreign governments and could, in fact, harm those ongoing and future efforts. Moreover, even in the unlikely event of successful legal action due to H.R. 4596, such cases will clearly take years – time survivors in need simply do not have.

Thus, in its continuing effort to help provide critical assistance to survivors of the Holocaust, we respectfully urge Congress to pursue other further efforts to:

- Support ongoing negotiations with East European countries pressing them to pass legislation and/or establish claims processes for the restitution of or compensation for private and communal property seized during the Holocaust; and
- Support the Terezin Declaration of July 2009, endorsed by 47 governments, which addresses outstanding restitution issues and which seeks the creation of a fund for the social welfare needs of survivors. Congress can help build on this declaration to urge European governments, the European Union, and private companies – including insurance companies – to step forward and meet these needs.

We are ever mindful that no agreement, no legislation, no hearing can ever provide closure on the moral responsibility of governments, institutions and individuals to confront the past and to learn the lessons of the Holocaust about tolerance and the need to safeguard human rights and human dignity.

This hearing demonstrates the enduring quest of Americans and the Members of Congress who represent them to seek justice and to never forget what can happen when anti-Semitism, when hatred in any disguise, goes unchecked. In this effort, we urge the Subcommittee to prioritize the urgent and particular needs of the survivor community and to work to ensure that the most number of survivors, receive the maximum amount of support, as soon as possible.

**Appendix A:**

**MEMORANDUM ON H.R. 4596:  
HOLOCAUST INSURANCE ACCOUNTABILITY ACT OF 2010**

***THE PROPOSED LEGISLATION WOULD:***

- (a) **Establish a State Cause of Action:** H.R. 4596 provides that any state law creating a cause of action against an insurer based on an insurance policy in effect between 1933-1945 and issued to a policy holder residing in any area occupied or controlled by Nazi Germany will not be “invalid or preempted” by any Executive Agreement entered into by the U.S. The bill also prevents any court – state or federal – from dismissing such a claim on statute of limitations grounds, if brought within 10 years of the passage of the proposed legislation.
- (b) **Mandate Disclosure of Insurance Information:** The bill provides that any state law, enacted on or after March 1, 1998, which requires an insurer doing business in the state to disclose information regarding Holocaust era policies, “shall not be invalid or preempted,” notwithstanding any Executive Agreement involving the U.S.

In sum, H.R. 4596 seeks to compel insurers to disclose information to facilitate lawsuits based on Holocaust era insurance policies issued in Europe between 1933-1945 by validating certain existing, or encouraging the passage of new, state laws.<sup>1</sup>

***Issues of Concern***

- (a) ***Survivors Can Already Make Claims Today***

Although ICHEIC has concluded, insurers which participated in ICHEIC committed to continue to process claims based on Holocaust era policies. This negates the need, with respect to ICHEIC companies, to establish state causes of action. Assistance is available to help survivors file such post-ICHEIC claims and there is oversight of whether insurers are responding to applicant inquiries appropriately and in a timely manner.

<sup>1</sup> In contrast, H.R. 1746, the Holocaust Insurance Accountability Act of 2007 and 2008, unsuccessfully sought, during a previous congressional term, to establish a federal-based cause of action and disclosure requirement related to Holocaust era policies. Proponents of both bills criticize the International Commission on Holocaust Era Insurance Claims (“ICHEIC”), which established a process to pay individual Holocaust era insurance claims issued by its five participating insurers and their subsidiaries – that is, Generali, Allianz, Zurich, Winterthur and AXA – as well as by German insurance companies (and defunct companies which were nationalized or whose assets were nationalized by communist regimes). Established in 1998, ICHEIC consisted of representatives from these insurance companies, the National Association of Insurance Commissioners, the World Jewish Restitution Organization, the Claims Conference (including the American Gathering of Holocaust Survivors and the Centre of Organization of Holocaust Survivors in Israel) and the State of Israel. Lawrence Eagleburger, former U.S. Secretary of State, served as Chairman of ICHEIC and the Insurance Commissioners of Florida, New York and California also played a major role in the work of ICHEIC.

(b) ***Congressional Support Raises False Hopes for Survivors***

While well-intentioned, H.R. 4596 will generate unrealistic hopes and false expectations among survivors. Simply creating a cause of action is far from ensuring a success in court. The cost and complexity of pursuing litigation will be prohibitive, even for the few able to sue. Claimants will still have to surmount a range of legal obstacles in state court, including issues related to burdens of proof and evidence, as well as formidable defenses which would be raised.<sup>2</sup> The reality is that, at best, a handful of survivors and heirs have any chance of realizing a benefit. Sadly, this will do little to bridge the gap between Holocaust era insurance policies which remain unpaid and claimants that should be paid.<sup>3</sup>

(c) ***Damaging U.S. Credibility in Ongoing and Future Negotiations***

Passage of H.R. 4596 would amount to the specific disregard and violation of previous agreements, including Executive agreements which contain undertakings by the U.S. to provide "legal peace" to certain insurance companies. Such Executive agreements with Germany and Austria helped to generate over \$200 million in compensation and social welfare assistance to survivors.<sup>4</sup> Repudiating the very commitments which induced insurance companies and countries to participate in international agreements in the first place – but not until after the distribution of the monies they contributed pursuant to these international agreements – would compromise the U.S. role and undermine confidence in the ability of the U.S. to keep its promises with respect to future commitments.

(d) ***Critical Survivor Assistance Could Be Undermined***

H.R. 4596 also damages ongoing negotiations with Germany and others on vital current and future funding for the benefit of Holocaust survivors in the U.S. and abroad. These negotiations affect far more survivors and involve much more in compensation than will ever be realized through H.R. 4596.<sup>5</sup> H.R. 4596 jeopardizes these and other negotiations on

<sup>2</sup> Claimants would also have to identify and locate the company (or its modern-day successor) which issued a given policy, as well as establish jurisdiction where the insurer now does business.

<sup>3</sup> While mindful of the criticisms of ICHEIC, ICHEIC did pay over \$300 million to eligible claimants, while distributing about another \$200 million for assistance programs, including for homecare, to survivors in need. ICHEIC was able to pay tens of thousands of survivors and heirs of victims because it applied an extremely liberal evidentiary approach – that no state court would adopt – in processing claims. State courts, for instance, would not deem claimants without documentary support or with policies issued by defunct insurers eligible for payment (both of which ICHEIC did). ICHEIC also handled claims at no cost to claimants and ignored statutes of limitations; H.R. 4596 is silent on the issue of attorneys' fees and litigation-related costs.

<sup>4</sup> This funding was obtained from insurance companies, industry and countries participating in the German Foundation "Remembrance, Responsibility and Future" and the Austrian Foundation "Reconciliation, Peace and Cooperation," in return for, among other matters, the U.S. commitment to issue a statement of interest encouraging courts in this country to dismiss claims brought to recover compensation based on Holocaust era insurance policies. H.R. 4596 seeks to prevent the U.S. from taking the very action it promised, by blocking the government from issuing such a statement of interest. [H.R. 4596, sec. 3(d)]

<sup>5</sup> In the past few years alone, for example, Claims Conference negotiations with Germany have secured approximately \$320 million over the next decade, for homecare funding for Jewish victims of Nazi persecution – the most urgently needed and effective form of assistance – increased pension payments to survivors, the inclusion

open issues around continuation and expansion of urgent funding for the neediest survivors.<sup>6</sup>

(e) ***Disclosure would unleash a trove of largely unhelpful and misleading information***

H.R. 4596 endorses state laws obliging insurers, or (most likely) their European affiliates, to divulge data regarding Holocaust era policies, without any system to determine if the policy holders and/or beneficiaries are Holocaust victims. There are real obstacles to obtaining the information: a) many Holocaust era insurance companies, especially those which did business in Central and Eastern Europe, no longer exist; and b) insurers still in business would have to overcome the stringent European data privacy laws binding them.

Even absent these obstacles, while the information ultimately produced may very well reflect millions of policies, the overwhelming number of the policies will not have been purchased by victims of the Holocaust and many of those that were may already have been paid or otherwise compensated. Given the significant effort by ICHEIC regarding policy holder lists, compelling publication of “information” regarding Holocaust era insurance policies will yield little new, useful data regarding unpaid Jewish policy holders who were victims of Nazi persecution.<sup>7</sup>

***Recommendations for Action to Help Needy Survivors Today:***

At this late stage in the lives of survivors, instead of the proposed legislation which risks undermining significant funding for tens of thousands of survivors in need, while providing compensation for a few claimants at most, Congressional action addressing the following issues would most effectively assist Holocaust survivors and their heirs:

- Supporting ongoing negotiations with Central and Eastern European countries focusing on establishing claims processes and/or laws which would enable former property owners and communities to recover or receive fair compensation for assets -- private and communal -- seized during the Holocaust and/or subsequently nationalized by communist regimes.

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of additional survivors in pension and one-time payment programs and the establishment of a new payment program. An additional \$70 million was obtained in homecare services for immediate distribution for survivors in need for 2008 and 2009.

<sup>6</sup> These open issues, which involve tens of millions of dollars and require further negotiations, include increasing the payments made through the Article 2, Central and Eastern European and Hardship Funds; lowering the time period required for survivors to be eligible for certain pensions; raising the stipulated income level below which survivors are eligible for pensions; making survivors who were in open ghettos eligible for payments; obtaining payments for child survivors; and increasing critical homecare funding, for which there is currently no agreement in place for German government financing for 2010 and beyond.

<sup>7</sup> ICHEIC researched millions of policies and published the names of over 550,000 (most likely to be Jewish) Holocaust era insurance policy holders. That list was widely advertised and led to tens of thousands of survivors and heirs of Nazi victims being paid over \$300 million by ICHEIC.

- Supporting and implementing the Terezin Declaration of July 2009, signed by 47 governments, and the related European Shoah Legacy Institute, through which projects are being developed: including “Guidelines and Best Practices for Restitution and Compensation of Immovable (Real) Property Confiscated... during the Holocaust,” I which countries will be urged to follow; and the creation of a fund which would address the social welfare needs of survivors worldwide most in need.

**Appendix B:**

1. **Can a Holocaust survivor who is a policyholder or beneficiary of a Holocaust era insurance policy file a claim with the relevant insurance companies, even though the formal process established by the International Commission on Holocaust Era Insurance Claims ("ICHEIC") has concluded?**

Although the claims and appeals processes of ICHEIC have formally ended, the insurance companies which participated in ICHEIC committed to continue to accept and process remaining Holocaust era insurance claims – applying the ICHEIC standards in their decisions – at no cost to claimants. In addition, the Holocaust Claims Processing Office ("HCPO"), of New York State, assists survivors in preparing and filing such claims with insurance companies. The important work of the HCPO greatly helps claimants, nationwide, pursue their claims and is provided at no charge.

Thus, today, anyone who believes he or she is the beneficiary of a Holocaust era insurance policy and can identify the issuing company is still able to file a new claim with any of the companies that participated in or cooperated with ICHEIC, despite ICHEIC's closure. For German insurance companies, it is sufficient for claimants to contact the German Insurance Industry and state that they believe there is an unpaid Holocaust era insurance claim and the German Insurance Industry will circulate the claim among the relevant member companies. These include some of the largest insurance companies operating today in Western Europe. While the companies will not consider claims that have already been decided under the ICHEIC process, they have agreed to continue to process new claims against Holocaust era policies underwritten by a specific company, and they will do so using relaxed standards of proof.

2. **Given the leniency built into the ICHEIC process, how could claimants, even were H.R. 4596 to be enacted, achieve better results in court?**

The higher standard of proof applied in courts than used by ICHEIC would make it significantly more demanding to establish claims. Even if not impeded by statutes of limitations, claimants would still face a number of serious obstacles, including those related to rules of evidence, burdens of proof and other formidable defenses. Moreover, even if claimants could afford the considerable costs of litigation – and many will not – any such lawsuits will take time that survivors, on the whole, do not have.

3. **How many claimants can hope to benefit from H.R. 4596?**

It is difficult to provide a reasonable estimate of the number of individuals there are who might have a Holocaust era insurance policy but who did not yet file a claim with ICHEIC as they did not know of the ICHEIC process.

ICHEIC had a comprehensive, worldwide outreach campaign in which it invited all Nazi victims and their heirs who thought their family may have had insurance to file a claim. If the claimant did not know the name of the company, it was circulated to ICHEIC member companies that did business in the country where the potential policyholder had lived. Each company was required to look in its files for a match and if a match was found, the claim was processed as a full claim against that company. It should be noted that the "matching process" used by the companies was the subject of an independent audit. (In comparison, under H.R. 4596, if the potential claimant does not know the name of the company that issued a policy, he or she will not be able to commence any litigation.)

In addition, ICHEIC published a list of Jewish Nazi era policyholders. The list was a combination of Jewish policyholder names supplied by the companies and Jewish policyholder names derived as a result of the archival research compiled by ICHEIC. The result of this process was the publication of over 550,000 (most likely to be Jewish) Holocaust era insurance policy holders. This, too, was the subject of independent audit.

H.R. 4596, in contrast, would require a substantial work and time investment for what likely would be a very small return. While the legislation may very well lead to the disclosure of information which reflects millions of policies, the overwhelming number of such policies will not have been purchased by victims of the Holocaust, nor by Jewish individuals. In other words, compelling publication of information regarding Holocaust-era insurance policies, pursuant to H.R. 4596, will yield little new, useful data with respect to unpaid Jewish policyholders who were victims of Nazi persecution.

Moreover, H.R. 4596 is not likely to yield anything comparable to the tangible benefits survivors already are receiving based on agreements with foreign governments. H.R. 4596 may jeopardize the continuation of such existing agreements and may compromise this country's role with respect to future negotiations, raising real questions about the ability of the U.S. to abide by its promises.

#### **4. What is the likely impact of H.R. 4596 on the survivor community in the U.S.?**

The proposed insurance legislation may well raise the expectations of Holocaust survivors only, in the end, to disappoint them. The costs, time and effort required to engage in the litigation provided for in the legislation will be excessive, if not prohibitive, even if the insurance companies can overcome the strict European data privacy laws. The burden of proof confronting claimants will still pose an immense obstacle to surmount, in light of the death certificates, as well as policies and other official documents that were lost or destroyed during World War II and subsequently. In addition, the mandatory publication by the insurance companies which participated in the



process established by ICHEIC of all policy holder names – facilitated by H.R. 4596 – will, at this point, yield little new information regarding policy holders who were victims of Nazi persecution. Further, even assuming that European data protection hurdles could be overcome, most of the policies which would be disclosed would not have been purchased by victims of Nazi persecution; many of the policies would have already been paid out; and many of those not paid would have been otherwise compensated. Thus, the huge expectations that the legislation will generate on the part of survivors will simply not be met – leading to upset, disappointment and frustration.

**5. Apart from existing agreements and ongoing negotiations, especially with Germany, what might be sources of additional funding to assist Holocaust survivors in need?**

In June 2009, the Prague Conference on Holocaust Era Assets concluded with 47 countries approving the Terezin Declaration, a joint statement including, among other matters, language which focuses on the need to help survivors in their last years, through home care and other health and medical-related assistance. The intention is that the Terezin Declaration and follow-up will motivate signatory countries to step forward and help meet these needs of survivors, whether by contributing to a fund or by returning certain property seized during the Holocaust. Such an approach, and efforts related to it, will bring far more funding to assist more survivors in need, and will do so much sooner, than the legal actions encouraged by H.R. 4596.

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Mr. COHEN. We will now start questioning. It will be 5 minutes. And my first question is to Mr. Dubbin.

You made some statements, with the permission of the chair to go over, about some organizations. And I think it was the Anti-Defamation League and maybe B’Nai Brith, two revered organizations in this country.

And while I understand, as a person who gets campaign contributions, that they can have effects on you in certain ways maybe you sometimes don't even understand, I have also gotten contributions from groups that I never would support. And I feel like, if they want to give me money, so be it. I am still going to vote against their issue if I think it is wrong, and I don't make it what decides what I do.

Those statements you made were serious, and I would like you to just address them. Do you have any definite basis for suggesting that those contributions have influenced the policy or decisions or positions of either of those organizations?

Mr. DUBBIN. Well, there is a difference, Mr. Chairman, between an elected official whose job it is to balance the public interest considerations that he has to deal with in making public policy and a Jewish not-for-profit organization whose only currency is morality. So if in the heat of a public battle over whether Generali lied to its customers, lied to the public, failed to pay policies, lied about the fact that it had a complete archive of all of its policyholder informations, if in the heat of that battle the ADL wants to take money, it has the right to take money. But to then step out in the public domain and support the company that victimized Holocaust survivors on that issue I think is—

Mr. COHEN. Tell me, Mr. Dubbin, your proof. How much money did they receive, and when did they receive it?

Mr. DUBBIN. Well, what is certain is that, in 1999, they received \$100,000 at a dinner honoring Generali's president and have consistently, since that time—

Mr. COHEN. And this is the Anti-Defamation League?

Mr. DUBBIN. This is the Anti-Defamation League, okay? So again, I don't question their ability to receive money from a company like this, but they don't have a public—

Mr. COHEN. Let me ask you a question. Had they taken a position prior to 1999 that was consistent with their position today? Have they changed their position since they received that contribution, or has their position been consistent?

Mr. DUBBIN. They were not—I am not aware of their having taken the position prior to the time they received that money, but that all happened about the time that this issue was raised in the public consciousness.

I mean, as a practical matter, the issue was raised in the heat of the Swiss Bank controversy in 1996. Generali issued a paper around the world saying that it was a lie that they had records of unpaid policies. A reporter found an archive entry that showed that they had systematic records of the policies they sold during that period of time.

The NAIC then conducted hearings, digging into this, hearing from survivors about what happened. And states passed laws in 1998, like Mr. Garamendi said, saying if you want to do business in our state, you have to produce the information from that period of time, and also extending periods of—

Mr. COHEN. So bottom line is, you say that there is public record—it is given that, in 1999, \$100,000 was contributed to the ADL, and you don't know if they had a position. To the best of your knowledge, they didn't have one prior, but they had one later. And

you are suggesting that that \$100,000 influenced them. Is that what you are saying?

Mr. DUBBIN. I am saying that, in evaluating—well, I will say something else, okay? At the time they sent a letter out—

Mr. COHEN. Go ahead. I am listening.

Mr. DUBBIN. I am saying there are other—I think you also have to ask the question about the former president of the ADL who is also Generali's chief lawyer, who plays a prominent role in the organization, whose name is on the letter that was sent by ADL opposing the survivors' interests.

Mr. COHEN. And what is that man's name?

Mr. DUBBIN. Ken Bialkin. I am saying that the Congress should consider the motives of an organization that had no direct involvement in the advocacy for survivors' affairs prior to the time they took that money. I went on the—one of the things the Holocaust Survivors Foundation has been advocating for is—

Mr. COHEN. Let me ask you another question. You mentioned a second group. Was it—

Mr. DUBBIN. It is the American Jewish Committee, okay, and the American Jewish Committee is currently advertising and making no bones about the fact that it has a partnership with Allianz—Allianz is a company that attempted to secure the naming rights for the New York Giants-Jets stadium in New Jersey in 2008—and the public outcry over its unmet Holocaust-era actions, not only having insured Auschwitz but having failed to pay a couple of billion dollars worth of policies resulted in them withdrawing their bid to name the Allianz—to name that stadium in New York. They were part of ICHEIC.

But according to Sid Davidoff, the economist who was in ICHEIC for 6 years, they have tens of thousands of unpaid policies, including, by the way, policies from Ross, which like Generali was a Jewish company, an entity that Allianz acquired, they have at least \$2 billion worth of unpaid policies.

So I am not saying that the American Jewish Committee can't have a partnership with anybody it wants to. They could have one with Phillip Morris. They could have one with Goldman Sachs. They could have one with Allianz.

But to then step into the public debate against Holocaust survivors who have made it clear—I mean, these are elected survivors from all over the country who say, if Mr. So-and-So wants to go to ICHEIC, if Mr. So-and-So wants to go to Ms. Rubin, they have every right to do that. If they want to accept 10 cents on the dollar, like ICHEIC was paying, they have every right to do that. But I am an American citizen.

My father entered into a contract with the Generali and Allianz. That contract, by the way, they promised to pay wherever the claimant sought payment. So these aren't foreign transactions, because they knew, when they were selling to Jewish people in Europe, those people may not end up in Europe after the war.

Mr. COHEN. So they have got an agreement with this company, but they haven't necessarily taken a contribution that you know of?

Mr. DUBBIN. The documents that I have seen that are public say that Allianz is funding trips through the American Jewish Committee of young professionals to Germany as part of a partnership.

Mr. COHEN. All right. Let me ask a question of the panel. And I wish we could go into the substance, and maybe we will in further questioning about the substance of the law and the merits of the law. But you brought up, and I think it is a serious allegation, and it needs to be clarified. I would like to ask either the ambassador or anybody else, do you have any knowledge of any of these contributions, and what is your response to what Mr. Dubbin has suggested?

Ambassador, you are recognized.

Mr. EIZENSTAT. In the space of 5 minutes, the chief outside advocate for this bill has impugned the rationale, saying that the executive branch that negotiated these \$8 billion in settlements has misrepresented the legal peace that it offered, which is not the case. We said that the statement of interest was in the foreign policy interest of the government. We did not suggest that there was absolute immunity, and that the courts have upheld that.

Second, the notion that ICHEIC was somehow a tool of the foreign insurance companies, it was headed by the former Secretary of State of the United States, Lawrence Eagleburger. It had, and was initiated, by insurance commissioners of this country, Bill Nelson, Glenn Pomeroy, Diane Koken, Charles Quakenbush from California.

The notion that it had no claimant representatives on it—Mr. Dubbin says he is the representative of the claimants. Roman Kent, whose testimony is so eloquent against this bill, is the founder of the American Gathering of Holocaust Victims. It was the first time, 20 years ago when they met, that Holocaust victims ever met each other. He founded the organization.

The Jewish Agency of Israel was on this. Moshe Sanbar, the chairman of the Center of Organization of Holocaust Survivors in Israel, the American Jewish Committee, the ADL, I mean, the notion that these are somehow tools of the insurance companies that they got \$300 million from, paying policies that would never have been paid in court, is really a terrible allegation.

Now, I am not here—I am representing the United States government, but because these groups, the ADL and the AJC, have taken the position we have, I think it is very important to clarify the record. They haven't opposed this legislation.

These are groups—the American Jewish Committee, for goodness sake, has been around for almost 100 years representing the interests of Jews all over the world and others disadvantaged. Abe Foxman is the prime spokesman for the defense of human rights anywhere. He is himself a Holocaust child survivor.

And the reason that they—again, not speaking for them, but I know about this dinner. Allianz was a key partner in getting \$5 billion, 10 billion deutschmarks, from the German companies and German government. And \$280 million of that was passed through to ICHEIC. Generali, the reason I am sure that they were honored, they paid \$135 million in claims through ICHEIC, more than any other company, almost 4,000 claimants. Another \$48 million to foundations in Israel, Germany, Austria and Netherlands, \$3 million to claimants outside of ICHEIC, a total of \$200 million.

I mean, the notion—the notion—that the groups that have opposed, as we do, this legislation have done so because they have

been bought and sold by foreign insurance companies whom were extracted \$300 million for victims, who have spent their whole careers fighting for justice for Jews and other discriminated against? The record should not stand with that allegation.

Mr. COHEN. Thank you, Mr. Ambassador. And that is why I raised it as a question, because it is a serious allegation. If it is true, it needs to be aired. And if it is not true, it needs to be dispelled.

Does the professor or Ms. Rubin want to make comment on any of those allegations? You are obviously—Solomon.

Professor, let me ask you this. You say that this is a fundamental and basic law. You believe that, because of the separation of powers, the inherent authorities of the legislature, that the executive has overstepped itself. Is that your position?

Mr. VAN ALSTINE. With respect to this legislation, absolutely, and I am not sure that anyone can make a plausible claim to the contrary.

Mr. COHEN. Is there any precedent for this type of action? You have got 10,000, you said, executive orders out there. Do they all rival the—and come in the same—no?

Mr. VAN ALSTINE. No. The precedent on these executive agreements, there are three previous cases, two of which go back to World War II. They relate to the recognition of the Soviet Union entirely within the executive branch's authority to recognize governments, totally unproblematic. The difficulty was there was some really loose rhetoric in the first—it was the Belmont case. I won't be too much law professor and tell you all the details of that.

Second one related to the agreements that settled the Iran hostage case, and that was clear executive—I am sorry, clear approval of Congress, and the Supreme Court made absolutely clear in that Dames & Moore case that it was related to the sole facts of that case.

The trouble is the loose language of the court in Garamendi. Actually, I firmly believe the Supreme Court will overrule Garamendi at some point. In fact, I read there is a later case called Medellin, and I think the Supreme Court has already overruled Garamendi. But it is out there.

And with just one narrow thing to make sure that I am not misunderstood, if a state were to intentionally inject itself into foreign affairs—I will give you an absurd example—if Michigan were to declare that they don't like the government of France and they are not going to recognize France as a country, or something absurd like that, if a state were to inject itself into foreign affairs, then yes, that would be something completely independently that would preclude that that would be barred by all sorts of other provisions in the Constitution I won't get into.

But the idea that the executive branch can simply state that it is foreign policy and take away private rights, I am not aware of any plausible argument that that conforms to—

Mr. COHEN. Mr. Ambassador, do you have a plausible argument to counter Professor Van Alstine's position?

Mr. EIZENSTAT. Mr. Chairman, I am not here to debate constitutional issues of preemption. The government will have its position if it decides to file an amicus brief in the cases which are pending.

What I am here to do is to say that, as a policy matter, we established a process that paid tens of thousands of people who would never have been able to recover in court, and that we did so and got that money on the basis of an understanding that we reached, a bargain that we would file statements of interest asking that cases be dismissed on any legal ground because it was in the foreign policy interest in the United States. So that is how we got this money. And I am not here to debate the preemption or not.

Mr. COHEN. Yes, but let me ask you—Mr. Ambassador, I appreciate that, that maybe you are not here to debate it, but we are here to hear it.

Mr. EIZENSTAT. Yes, sir. And I—

Mr. COHEN. And as a legislator, I am a legislative guy. I spent my whole life in the legislature. You have spent your whole life in the executive. There are differences, and there is a Constitution to say what is Caesar's and what is God's. And the ends don't always justify the means. Is there a basis in an argument that you can make that would counter Professor Van Alstine's, that this is a usurpation of congressional authority?

Mr. EIZENSTAT. There is, and that is what the Supreme Court of the United States said in *Garamendi*. Basically, they said that the foreign policy of the United States preempts conflicting state laws. That is what they said.

Now, in terms of what the Administration will say, I am going to leave that to the solicitor general. But there certainly are very strong legal grounds here. But again, I am here to talk about the policy issues. What Congress can do constitutionally and what it should do, given the bargain that was reached here and what it would do to impugn the credibility of the United States, are very different things.

Mr. COHEN. Let me ask Mr. Dubbin this. He may have knowledge, Ms. Rubin may have knowledge, I don't know. Obviously there are issues on both sides. There have been a lot of individuals who have received compensation and a goodly amount of money. What is your position on how many people who have not received compensation, and how much money have they been denied?

Mr. DUBBIN. Well, I rely on Sid Zubludoff, a well respected economist who participated in ICHEIC, participated in the study they did where they examined the markets in Europe and how many policies each of these companies sold and the like.

He said that, at the time ICHEIC started, there was about 800 million then, \$14 billion at the time in unpaid money. By the time ICHEIC ended in 2007, that was 18 billion in unpaid, okay? ICHEIC compensated 250 million of 18 billion, and it paid 14,000 claims out of 800,000 policies, according to Mr. Zubludoff. I am telling you that the number of unpaid policies is undoubtedly in the thousands. It is probably in the tens of thousands.

Does that mean that is how many lawsuits will result if this law passes? Honestly, I doubt it because, you know, some families have passed from the scene entirely. Some families were annihilated. A lot will depend on the kind of protections.

I mean, let us face it. It is not easy to sue an insurance company. I mean, this bill doesn't give anybody any money. It simply allows the states to go get that information like Mr. Garamendi said they

were trying to do before ICHEIC came along and cut short the amount of information that the insurance commissioners thought they needed, and it would allow people to go to a lawyer, say, "Do you think I have a case?"

Now, most states have laws saying that, if you have to sue an insurance company to get your money back, you get your attorney's fees and additional damages because most lawyers are not going to take a \$50,000 or \$100,000 case on a contingency. But the money belongs to the people and the heirs, not the insurance company.

Mr. COHEN. Some have alleged that this will not open up the courts to that many people, and only really to one client. What is your response to that?

Mr. DUBBIN. That is simply not true.

Mr. COHEN. Anybody else have a comment on any of the matters that we have discussed?

Mr. DUBBIN. I would like to see that if someone has actually written that, because I can promise you that that is not true.

Mr. COHEN. Ms. Rubin, do you have any comments on any of the things that have been discussed, close up?

Ms. RUBIN. I would simply say that our study of the market, of the pre-war insurance market suggests that the value of the overall market is far less than what is asserted to be the remaining unpaid balance of insurance policies.

Our study has showed that the market was valued, at the highest possible U.S. conversion rate, to be about \$13 billion. Using an alternative method to up-rate the 1936 dollar to today's value, we get \$6 billion. Calculation is very contingent on the method you use to arrive at the figures.

As to the size of the overall market, I would also suggest that it is somewhat smaller in areas than has been articulated. We know that the Central and Eastern European insurance markets were relatively small. Germany had the largest market. They also had a highly comprehensive compensation program after the war. They continue to review claims today. They continue to pay claims today. They have paid over \$130,000 in claims since ICHEIC closed.

Since ICHEIC closed, we have also only received about 75 claims, or inquiries, for insurance policies. So the overall universe of what remains to be unpaid seems to be much smaller than—.

Mr. COHEN. Thank you.

Mr. EIZENSTAT. Mr. Chairman, we—

Mr. COHEN. Professor Van Alstine, do you have a comment on any of it? You are going to pass.

Mr. Ambassador, to close?

Mr. EIZENSTAT. Yes, Mr. Chairman. When ICHEIC began, it started with commissioning a study called the Pomeroy-Ferras study. Pomeroy was the state insurance commissioner in North Dakota. It provided solid evidence about the size and type of insurance products issued in each market prior to World War II.

And we very much agree with Anna Rubin's conclusion. They found, for example, that even in relatively wealthy Germany, the value of the average life insurance policy between 1933 and 1938 was about \$300 to \$400, and that the estimates of the proportion

of unpaid claims on survivors immediately following World War II, in the case of Germany, was between 15 and 32 percent.

So I think that the figures need to be put into that context. And may I also say that, after we reached our agreements, I testified very frequently before Congress in the Rayburn Building, explicitly outlining the agreements we reached, the legal peace concepts, the insurance agreements. This was done with the clear understanding and support of Congress. Jim Leach, as Chairman of the Banking Committee, had many, many hearings on this.

So this was not done in the dead of night. It was done with great transparency, and I am privileged to have had the support on a bipartisan basis of Members of Congress. But again, on the actual numbers, the Pomeroy-Ferras report and Anna's are, we think, the definitive.

Mr. COHEN. Thank you, sir, and I appreciate the indulgence of the Committee, and a little Chairman's prerogative, to take a little extra time.

I now recognize the Ranking Member, Mr. Franks, for as much time as he may consume, and some—maybe discard—

Mr. FRANKS. Well, thank you, Mr. Chairman.

Ambassador Eizenstat, I will just say to you, person to person, I feel like I really sense, on your part, a desperate desire to do what is right by the people that were so tragically treated and so subjected to such injustice. And I think, like you, all of us here on this panel want, more than anything else, given the injustices, to especially do everything that we can to see that the most effective mechanism possible is employed to bring about the fulfillment of contractual rights in this situation.

So what I want to ask you—and I assure you, I don't have a bias here on the answer to this question. This is a sincere desire to find the truth here—given the complexities that exist, what system, or which system do you feel represents the best opportunity, in a world of reality, to achieve justice for the victims of the Holocaust and for those who did not get their contracts fulfilled, the existing ICHEIC process and the ongoing process that we will follow, or something that would occur as a result of the protocol under this bill?

Mr. EIZENSTAT. Thank you for that very thoughtful question.

Without question, it is the ICHEIC process and the post-ICHEIC process. And may I say, in that respect, that we are not letting this process simply careen out of control ourselves. The companies have pledged to use the same liberal standards of finding policies even if claimants don't know the names of the companies.

I invite every single person that Mr. Dubbin represents to submit to us and to submit to Anna their names. We will submit it to the companies. We will ensure that those companies research the claims. We will ensure that they report to us on what they have done. That is a far better process than reopening, after a decade, agreements that were reached and hundreds of millions of dollars paid by these insurance companies on the basis of legal fees.

Let me just, if I may, show you why I think the process that was used is better than a court process. There were 91,000 claims made to ICHEIC; 31,000 of them, Congressman Franks, could not name



a company. There were, in effect, 60,000 unnamed claimants. That is an unnamed claim.

ICHEIC, at the cost to the insurance companies themselves, created a list of 500,000 names of possible policyholders, and then they published it on the Internet. They invited people at no cost to make claims. They sent in auditors to the insurance companies to confirm that the claims were being properly processed. They developed lenient standards of evidence that would never have been allowed, and won't be allowed, in a court today.

They took 8,000 claims that didn't even name an insurance company, and they found, through their own research, the actual names. They linked them. So somebody said, "I remember my father," or "My grandfather said I had a policy. I don't know what it was, but it was probably issued in such-and-such a company." Eight thousand of those were found and nearly \$100 million paid just on those policies.

They paid 2,900 claims against defunct companies, companies who don't even exist, because of the feeling that justice should be done to those victims. So these are all instances where the traditional court system wouldn't work.

Even if you take the legal peace aside, even if you take the fact that these companies paid with the understanding that the credibility of the United States would stand behind them, still the question you ask is the right question. This is a far more flexible system than having people go into court.

So again, every person that Mr. Dubbin or others think continue to have a claim, please give it to us. We will take it to the companies. We will oversee that process. We will insist that they use the same flexible evidentiary standards that they did, and it would never have been permitted in a U.S. court.

Mr. FRANKS. Well, thank you, Ambassador. Obviously, that seems to me to be very compelling, and you did answer the question that I was asking.

And Ms. Rubin, you know what I am really saying here, is how do we, within the bounds of the realities and complexities that we find ourselves in, how do we achieve the best justice possible in this situation? Do you agree with Ambassador Eizenstat?

Ms. RUBIN. I do. I do. I think openness and open communication, and the companies have indicated that they would be so willing is the best method.

Mr. FRANKS. That the greatest number of people, subjected to the injustice that occurred, will be made as whole as possible under the existing ICHEIC system and the following process rather than under what might occur if this bill became law. Is that what you are saying? Because, I mean, I think that is what the ambassador was saying.

Ms. RUBIN. I am saying that a non-litigious approach to resolving these claims is the best method to get as many claims as possible settled, for many reasons, and one of them being that the claimants don't—wouldn't have a place to start with the legal system in that they don't have information themselves.

Mr. FRANKS. Well, thank you.

Mr. Chairman, I am going to stop there, because that is certainly my goal here, and I think that that is what the Committee's goal

here, is to try to do the right thing. And sometimes it is hard to——

Mr. DUBBIN. Could I address the point?

Mr. FRANKS. Certainly. And Mr. Dubbin, I would also just throw this out. I mean, I will let you address that, but some of the comments you have made here today, there are those in the political circles that could throw a page or two back at yourself, given the notion that this might be something that would be financially enriching to you if it occurs.

Now, I am not suggesting that. I am just saying——

Mr. DUBBIN. They have said it. They have said it. I don't care.

Mr. FRANKS. Well, I do. I don't want to make such a contention otherwise. I am just suggesting to you that I would encourage you to be cautious about making such suggestions against organizations that, for a long time, even though I disagree with a lot of them on a lot of different subject issues, it is hard for me to call into question their basic commitment to the Jewish people.

Mr. DUBBIN. Well, that is fine, sir, but let me just say the following about that.

What I said about the organizations is not Sam Dubbin's opinion. This is from Holocaust survivors, okay, the Holocaust Survivors Foundation USA. I am channeling what they have asked me to say, what their letter says, what they have said publicly, okay?

But these are facts, and so you need to examine those facts as a policymaker to see whether or not these organizations—which, by the way, I have got on my mantle awards from those organizations for a long time. I mean, it pains me to see otherwise legitimate organizations using their currency—their moral currency of Jewish leadership to oppose Holocaust survivors.

Mr. FRANKS. Well, I mean, just to the point, Mr. Chairman, I guess that is why I asked the question, Mr. Dubbins, what was the best way to achieve justice for those people that are Holocaust survivors. That is the goal here within the bounds of integrity and the law. And we can never achieve the compensation that they deserve, except perhaps to make sure that such tragedies don't occur in the future.

Mr. DUBBIN. But remember what we are talking about here, contracts, okay, contracts sold to people who promised to pay them or their heirs wherever they sought payment. That is what we are talking about here, and many of those people ended up in places like California, Miami, New York and the like.

When ICHEIC started, it was understood, when people applied to ICHEIC, it was voluntary. It was not an exclusive remedy. This is abundantly clear in the ICHEIC minutes. The insurance companies attempted to get the commissioners to state that, in order to participate in ICHEIC, you had to waive your right to go to court. The commissioners said no.

So when people entered that process, it was understood to be voluntary. So we are not against ICHEIC. ICHEIC did what it did, and it is over with. Now, it didn't do a great job for a large number of people, and those people—and at the time, you said your initial question was, "This is all so complicated. How do we get to the bottom of these facts," the states had the answer in 1998. They passed laws saying, if you are an insurance company doing business any-

where in our state, and you did business back then, you need to produce the information about what happened to these policies during that period of time.

Now, there is nothing unusual about foreign corporations producing regulatory documents to insurance commissioners. They do that all the time. There is nothing unusual about foreign corporations participating in litigation where they are required, under court supervision, to produce their policies.

So let us take the case of Herb Karliner. He was on the St. Louis from Germany, sitting outside of Miami Beach. They were sent back. His whole family was murdered. His dad told him about an Allianz policy. He went through ICHEIC. Allianz told him, "We paid that policy to your father," and that was the end of the discussion under the rules of ICHEIC.

Years later, he was able to find the so-called repurchase document, which occurred on Kristallnacht when his father was in Buchenwald. But ICHEIC didn't supply that information to him so that he could have shown what a ridiculous denial it was. And with all due respect, I don't think Ms. Rubin is in a position to get that information.

That is why we have courts. That is why we have rules. That is why we have procedures. That is why we have judicial supervision. And all this legislation would do would be to open up the possibility for those people who believe they might have a claim, based upon further production of information, to pursue that.

Now, would I make money if it turned out that Allianz wrongfully denied payment to a person and I was that person's lawyer? You know, there is a system for compensation in—

Mr. FRANKS. Yes. No, I understand.

Well, Mr. Dubbin, I thank you for your comments, and I think I have given you an opportunity here to express your perspective. And with all due respect, I would like to give Ambassador Eizenstat the last word, if he would choose it, and then yield back.

Mr. EIZENSTAT. I am sure that Mr. Dubbin is acting in good faith, and I certainly wouldn't impugn his integrity, even though he may have impugned others of us.

What I have suggested to him, and what I would say again here, give us the names of your clients. Let us go through this process that we negotiated 10 years ago on which it is not only \$300 million paid on the claims, Congressman Franks, they paid another ICHEIC \$150 million for welfare benefits for survivors.

Give us those names. Give them to Anna. Let us pursue them with the companies using the ICHEIC framework. We will oversee it. We will stand on their necks to make sure that they do a thorough review. We will insist on a report.

And this is not just theoretical. Again, the German companies themselves have taken out of this post-ICHEIC process, just in the last couple of years, there have been 129 entries. They have identified 43 new policies. Ten were eligible for compensation. They have paid \$140,000 on those policies.

But again, your basic question was the most fundamental and most important, which is the best process. Would 31,000 people have been paid \$1,000 simply because they had anecdotal evidence?

That is what ICHEIC did. Would almost 3,000 have been paid against a defunct company that could never have been subject to jurisdiction? That is what ICHEIC did.

And so, that is the question. But again, I would just say to Mr.—I want, and the U.S. Government, wants every single policy paid that can be identified. Anna spends all day, every day, doing that. That is what we do. Give us the names. Let us try to find them under the process we created, not send them into court in an endless process, a fruitless and frustrating process where rules of evidence, statute of limitations and all these other things will be raised. You will see.

How do you have proof that you have got an insurance company? I mean, that is what we have avoided through this process, and that is what we will continue to avoid.

Mr. FRANKS. Well, thank you.

Mr. Chairman, I am going to yield back. I would just suggest that the complexities today, and some of the emotions and the remembrances of tragic situations should be an admonition to all of us to take very seriously when any nation, or any group of people, begins to diminish the personhood of any of God's children, because it is among our greatest failures as a people and as a nation and as a government when we do that.

It reminds me that, of course, you know the German High Tribunal. The Supreme Court of Germany once said that the Jew was *Untermensch*, subhuman, not a human being, and here is where all the tragedy really began. And of course, I know that so many of you are much more aware of that than most of the general public that sits in these chairs.

But I guess I just have to take the opportunity to try to admonish us all, in the days that we live in, not to let such tragedies ever enter our minds and to be on guard for them at all times.

And with that, I yield back.

Mr. COHEN. Thank you, Mr. Franks.

And now, I appreciate the lady from California, her willingness to sit in, and recognize you for as much time as you may consume.

Ms. CHU. Mr. Ambassador, there have been a number of claims by Mr. Dubbin and the proponents of H.R. 4596, which is that ICHEIC has ultimately distributed far less to survivors than the estimated value of the total unpaid whole cost era insurance claims, and that the flawed claims process was the reason for these shortfalls. How do you respond to that?

Mr. EIZENSTAT. There is no perfect process, but this process came as close as possible to doing justice in an expedited way without cost to the claimants, not sharing a third of the fees with any lawyers, as any process could. It posted 500,000 names of possible insured on its process. It accepted almost 100,000 claims. It sent in auditors to review the process of these insurance—these are things that would not have been possible because many of these companies weren't even subject to jurisdiction in the courts.

That is why we created this process. The state insurance commissioners did it. It wasn't the foreign insurance companies. They would have been more than happy to fight these cases in court and raise the statute of limitations, raise the fact that they weren't subject to jurisdiction because they don't do business here, raise the

defense that it is a defunct company, raise the defense that there is no evidence that the policy existed.

So there is no process that was perfect, but it is a process that didn't cost the claimants anything, that the insurance companies were required to pay for their own research, that auditors were sent in, that a special report was done of the insurance market by one of the insurance commissioners. So compared to any other process, it was as good a process as one that could possibly be created.

And again, may I please mention to you that the breadth of the membership of ICHEIC, it was state insurance commissioners from all over, and they created it because they know that, by subjecting claimants to case-by-case determinations in court, would be a fruitless, endless, frustrating process. They were the ones that initiated it with major Jewish organizations, with the Israeli government, with the state insurance companies, with virtually every major Jewish organization.

It is the best process that could be developed, and it is supplemented by Anna. Anna also handles, through the New York Holocaust Claims Processing Office, so it gives us a double advantage through her research and through ICHEIC research. And that will continue to this very day. If we have new names, they will be processed in the same way.

Ms. CHU. Well, they are also claiming that the ICHEIC process did not, in fact, employ relaxed standards of proof for claimants, and that many claims were rejected as a result. How do you respond to that?

Mr. EIZENSTAT. There were claims rejected because, for example, people had not even anecdotal evidence. They couldn't produce any indication, or they said "We have a policy, we believe." They gave the name of the insured, and after all the ICHEIC companies, with the oversight that I have suggested went through, there was no match.

Now, again, there were 8,000 people who did not have a policy. They couldn't name the policy their loved one had. But ICHEIC, through its research, was able to find 8,000 of those, but in others they simply had no evidence. And even in those where there weren't any, there were 31,000 people who just had a—they had some credible story. They remembered their father or their grandfather—they were paid \$1,000 apiece to 31,000 people, even without any credible evidence of a policy.

Ms. CHU. Mr. Dubbin, on the other side of the issue, the opponents of the bill argue that, if survivors are allowed to litigate, that their cases would be lengthy and costly, and that there would be difficult hurdles of evidence and jurisdiction if they were allowed to go to seek court remedies. How do you respond to that?

Mr. DUBBIN. The short answer, and as any survivor would tell you, that is their choice. They are American citizens, and nobody, not any Jewish organization, not their rabbi, not the principal of their high school, not their county commissioner, no one has the right to tell them that they don't have the right to go try.

But can I address the two questions you asked Ambassador Eizenstat, because they are really important in this sense, rather the fulfillment of the answer, which is that it is easy to say that

ICHEIC helped people, and it did. I mean, nobody questions that. But the idea that ICHEIC would be a legally binding and preemptive process was never the case.

So when people tried it, they understood that, if they were not happy, they would have the right to go to court. That is undisputed. That is undisputed. But today, the law says—and this is an exaggeration, a distortion of what was ever agreed to—the courts have said that, simply because a company participated in ICHEIC, a survivor cannot sue him, period.

That is constitutionally highly questionable. I think it is morally hard for Holocaust survivors to understand because they understood something to be different. So the idea that legal peace means that you don't even have the right to go into court against one of these companies was never the case. And I am going to explain that in a second, but I also want to address the relaxed standards of proof.

Generali was a company that sold a lot of policies to Jewish people. It was actually owned by Jews and managed by Jews, and many of the agents were Jews. So, not surprisingly, a lot of the customers were Jewish. There are a large number of policies where Generali admitted a policy was sold but denied payment through ICHEIC on the grounds that it was lapsed or paid or somehow went out of service before they computerized their records.

Now, ICHEIC accepted that, but Generali did not produce any proof of payment or lapse. Now, in court, if you have evidence of a policy, the burden shifts to the insurance company to prove the defense of payment or lapse or something like that. This happened in hundreds, if not thousands of cases in ICHEIC.

So on those cases alone, the idea that there were relaxed standards relative to court cases is false, is false. ICHEIC, instead of putting the burden on the insurance companies to prove their defense, put the burden on the survivors even though they had evidence of a policy. In the courts, the outcome would be different. Why shouldn't—and if you look at the exhibits I gave with my testimony, madam, you will see numerous examples of this from people all over the country.

Now, how many more are like this? I can't say. Why? Because ICHEIC did not comply with the congressional mandate to produce its claims processing information, so I don't know, and you don't know the exact number. But I hear from people all the time, and I have got a number of examples here, the New York Legal Assistance group, which is a pro bono legal operation in New York helping Holocaust survivors supports the legislation because they saw the runaround that a lot of survivors received.

So, legally speaking and morally speaking, it was never an exclusive remedy, and the relaxed standards of proof were not necessarily applied. And I would say in response to the argument that, hey, people who didn't know that they had a policy or not got paid, if the statute in California passed in 1999, or Florida passed in 1998 or New York passed in 1998 had been allowed to operate and hadn't been overturned by Garamendi, those companies would have had to produce those names, and those people would have gotten that information.

So maybe they would have wanted to go to ICHEIC to validate it and accept the significantly lower amounts that ICHEIC was paying. If people wanted to accept that, that is their right. Nobody is saying they shouldn't have the right to do that. But people who didn't want that shouldn't be bound by it.

So here is the nub of this problem right now, is that we keep hearing that this legislation would undermine promises of legal peace. Let us be clear: it was never promised by any President that, simply because a company participated in ICHEIC, that they would be immunized from litigation.

In fact, after the German agreement was signed, several Members of Congress wrote the Clinton administration and said, "We are worried that this agreement is going to preclude people from going to court." And the Department of Justice under President Clinton said, "We are opposing California's disclosure statute, but the agreement"—under the agreement, "The United States does not suggest that its policy interests in the foundation in themselves provide an independent basis for dismissal," the foundation being with insurance companies, ICHEIC. Now that is what the Clinton administration said to Members of Congress who raised concerns about what ultimately happened, which was ICHEIC becoming a mandatorily exclusive forum.

And then, a year later, the Clinton administration said in a court case that the United States has not undertaken a duty to achieve legal peace for German companies against state litigation, and the Clinton administration said in court the German agreement does not preclude individuals from filing—

Mr. COHEN. Excuse me. I am going to have to ask, and it may be wrong, but I did grant, as part of having gone over myself, Ms. Chu unlimited time, but I didn't grant Mr. Dubbin unlimited time.

Ms. Chu, are you satisfied with your response? Did you have another question?

Ms. CHU. I am. Thank you very much.

Mr. COHEN. Thank you, Ms. Chu, and I appreciate your patience, and my time, as well.

I would like to thank all the witnesses for their testimony today. Without objections, Members will have 5 legislative days to submit any additional written questions, which we forward to the witnesses and that you answer as promptly as you can. They will be made a part of the record.

Without objection, the record will remain open for 5 legislative days for the submission of any other materials. There are two statements that I have been asked to enter into the record. Without objection, they will. A statement of Mr. Roman Kent that was prepared for this particular hearing, and I believe he is in support of the position that the Ambassador has.

And Ms. Rubin, I guess, and the testimony of Jack Rubin—no relation—I presume they have given to the Senate Committees in the past, and he is in favor of the last bill that has been filed. And without objection, both will be entered into the record.

[The information referred to follows:]

**Statement of Roman Kent**

**U.S. House of Representatives  
Committee on the Judiciary**

**Subcommittee on Commercial and Administrative Law**

**Hearing on: H.R. 4596, the “Holocaust Insurance  
Accountability Act of 2010 ”**

**September 22, 2010**



I am a survivor of Auschwitz, the Chairman of the American Gathering of Jewish Holocaust Survivors and Their Descendants, and an officer of the Conference on Jewish Material Claims Against Germany, known as the Claims Conference. I served as a member of the Presidential Advisory Commission on Holocaust Assets in the United States, as well as a member of the Presidential Delegation to Poland for the Commemoration of the 65<sup>th</sup> Anniversary of the Liberation of Auschwitz. I also participated in negotiations leading to the establishment – and was a Commissioner – of the International Commission on Holocaust Era Insurance Claims (“ICHEIC”).

Over the years, I have been a vigorous advocate for what, in my experience and judgment, is best for survivors. For over two decades, I have actively participated in Holocaust-related compensation negotiations with the German government which have resulted in providing hundreds of millions of dollars, annually, for the benefit of Holocaust survivors worldwide. These funds have been used to help tens of thousands of survivors desperately in need of home care, medical assistance and other services in the twilight of their lives. In many instances, such services have been the survivors’ only available source of assistance.

For these reasons, I believe that I have a unique perspective from which to comment on the issues which are the subject of today’s hearing. The U.S. Congress has played a historic role in the just and moral effort to address Holocaust era compensation and restitution, an effort for which we have little time remaining. Thus, before proceeding, I want to express my gratitude to Chairman Cohen, as well as to the other members of this Subcommittee on Commercial and Administrative Law, for dealing with these issues.

The goal of H.R. 4596 seems admirable – to enable survivors and heirs of Holocaust victims to bring actions in state courts on their unpaid Holocaust era insurance policies. And, if there were nothing else to consider, I could easily support this effort to resurrect the right of survivors to sue for what is justifiably theirs. But there are other, serious factors to consider. These factors – especially the urgent and growing needs of poor and disabled survivors in this country and abroad, and the negative impact on other, proven efforts which assist survivors – must be assessed in evaluating the bill.

At this stage in the lives of Holocaust survivors, many are experiencing, and almost all can anticipate, the need for supportive services – including long-term care, health care and home care. Survivors in need require such services today. My concern is that H.R. 4596 would actually prove detrimental to the interests of survivors: it

promises much more than it can deliver and it may very well undermine existing agreements and mechanisms which benefit survivors now.

I want to highlight several key points pertinent to the proposed legislation:

- First, H.R. 4596 will raise unreasonable hopes. It will set up false expectations for survivors only, in the end, to disappoint them. Litigation will be lengthy and costly, especially if the issue of attorneys' fees are not addressed. As a result, only a few will be able to sue. Moreover, even those claimants will still have to overcome significant legal obstacles in state court, including issues related to burdens of proof and evidence, as well as formidable defenses which would be raised. Thus, the reality is that H.R. 4596 is unlikely to provide relief for many survivors or heirs of Holocaust victims with unpaid policies. At best, a handful of survivors and heirs of Holocaust victims might benefit, and not in the near future. In the end, the bill will not, in any significant way, bridge the gap between Holocaust era insurance policies which remain unpaid and claimants that should be paid.
- Second, state-mandated disclosure of insurance information – which is encouraged by the bill – will, at this point, yield little new information regarding policy holders who were victims of Nazi persecution. H.R. 4596 endorses state laws obliging insurers, or (most likely) their European affiliates, to divulge data regarding Holocaust Era policies. However, it does not provide, nor even hints at, any system to determine if the policy holders and/or beneficiaries of such disclosed policies are Holocaust victims. That is, even if the companies in question are initially able to overcome the stringent European data privacy laws protecting information about such insurance policies from disclosure – no easy task, as the European confidentiality laws in this respect are much stricter than ours – almost all of what may very well be millions of policies which might be ultimately divulged will not have been purchased by victims of the Holocaust. Moreover, many, if not most, of those that were purchased by Holocaust victims may already have been paid or otherwise compensated. Thus, state-compelled publication of “information” regarding Holocaust era insurance policies will yield little new, useful data regarding unpaid Jewish policy holders who were victims of Nazi persecution.<sup>1</sup> Further, many insurance companies which sold Holocaust era policies, especially those which did business in Eastern Europe, no longer exist. The bill will and can do absolutely nothing with respect to providing relevant

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<sup>1</sup> ICHEIC researched millions of policies and published the names of over 550,000 (most likely to be Jewish) Holocaust era insurance policy holders. That list was widely advertised in the U.S. and elsewhere and led to tens of thousand of survivors and heirs of Nazi victims being paid over \$300 million in insurance-related payments by ICHEIC.

insurance information or payments for those many survivors and heirs of Holocaust victims that purchased policies from such companies.

- Third, I am concerned that the proposed legislation is likely to seriously damage critical ongoing negotiations with Germany and others for the continuation and expansion of hundreds of millions of dollars in crucial funding required by survivors most in need in the U.S. and abroad. It threatens to do this by undermining or reopening previous agreements and other commitments. These negotiations offer the real prospect of substantial benefits for many survivors immediately, as compared to the doubtful likelihood of insurance recoveries for more than a few survivors or heirs of Holocaust victims offered by the enactment of H.R. 4596. The proposed legislation could very well disrupt such negotiations while significant open issues remain relating to funding urgently required for the neediest survivors.
- Fourth, enactment of H.R. 4596 would represent the specific disregard and violation of previous agreements, including Executive agreements, which contain undertakings by the U.S. government to seek “legal peace” for certain insurance companies. Executive agreements with Germany and Austria, for example, helped to generate over \$200 million in compensation and social welfare assistance to survivors.<sup>2</sup> Yet, H.R. 4596, by its very terms, seeks to protect (and/or encourage the passage of) state laws which permit state court actions based on Holocaust era insurance policies, which would undermine or preempt the Executive agreements in question. And, yet, these very Executive agreements induced insurance companies and countries to participate in certain international agreements and provided hundreds of millions of dollars in funding which has already been distributed. Such conduct, put mildly, would cause a massive loss of confidence in the ability of the U.S. to keep its promises with respect to future commitments. Such loss of faith, in turn, would weaken support the U.S. could provide survivors in dealing with foreign countries.
- Fifth, because individual claimants will find it difficult, if not impossible, to procure the necessary information and resources to take effective legal action in state courts, I suspect that the bill’s major, practical effect will be to open

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<sup>2</sup> This funding was obtained from insurance companies, industry and countries participating in the German Foundation “Remembrance, Responsibility and Future” and the Austrian Foundation “Reconciliation, Peace and Co-operation” in return for, among other things, the U.S. commitment to issue a statement of interest encouraging courts in this country to dismiss claims brought to recover compensation based on Holocaust era insurance policies. H.R. 4596 seeks to have state courts ignore the very action the U.S. promised, by blocking the government from issuing, or seeking to block implementation of, such a statement of interest. [H.R. 4596, sec. 3(d)]

the door wide to class action lawsuits which, even if successful, would benefit lawyers far more than any Holocaust victims.

Finally and perhaps most importantly, a process is available for survivors with remaining Holocaust era insurance claims against companies which participated in the ICHEIC process. Indeed, the ICHEIC insurance companies continue to accept and process Holocaust era insurance claims received after the close of the ICHEIC process -- still applying the liberal ICHEIC evidentiary standards in their decisions, including not applying statutes of limitations -- at no cost to claimants. In addition, the Holocaust Claims Processing Office ("HCPO") of New York State assists survivors nationwide, filing such claims with insurance companies, at no charge.

#### **THE INTERNATIONAL COMMISSION ON ON HOLOCAUST ERA INSURANCE CLAIMS**

##### **A. HOLOCAUST ERA INSURANCE CLAIMS PRIOR TO ICHEIC**

During and for almost sixty years after the end of World War II, few Holocaust survivors were able to recover the proceeds of their unpaid Holocaust-era insurance policies. They faced enormous obstacles in their efforts to obtain payment on such policies, many of which remained unpaid, and few attorneys stepped forward willing to help with their plight.

In that period, insurance companies were averse to paying, even to giving a fair hearing regarding, such claims. Indeed, there are chilling examples of companies insisting that claimants produce death certificates, including from Auschwitz, of deceased policy-holders. The absence of relevant documentation -- much of which had been destroyed or lost -- legal defenses forwarded by the insurance companies, the extraordinary difficulty and complexity involved in appraising the real value of policies decades after they were issued, and the prohibitive costs and time involved in pursuing legal actions against the companies proved insurmountable obstacles to successful recovery for virtually all potential claimants. Moreover, the nationalization or disappearance of many companies which had sold insurance in pre-war Europe prevented insurance recoveries as well.

A vacuum existed in post-war insurance restitution efforts. No effective way existed for survivors to obtain payment for their pre-war insurance claims. Ultimately, few survivors or members of their families were able to convert the policies they had purchased into the compensation they were owed.

Such circumstances are precisely why the ICHEIC agreement was reached: to establish a process to fill this void and enable claimants to attain some measure of justice which, up to that point, did not exist.

The agreement to establish ICHEIC, known as the Memorandum of Understanding, was signed in 1998 by the following parties: the World Jewish Restitution Organization and the Claims Conference – both included representatives from the American Gathering of Jewish Holocaust Survivors and the Centre of Organizations of Holocaust Survivors in Israel, which are organizations that, for years, have represented and worked on behalf of survivors' rights; the National Association of Insurance Commissioners, which represented the state insurance commissioners of all 50 states; six (which later became five) large European insurance companies; and the State of Israel. In addition, as part of the negotiations with the German government and industry, which ultimately led to the establishment of a DM 10 billion fund, primarily for former slave and forced laborers, German insurance companies also became part of the ICHEIC process.

## **B. THE ICHEIC PROCESS**

### **1 ICHEIC Sought to Resolve All Claims Submitted Regardless of the Company Identified in the Claim**

ICHEIC served as a forum – at no cost to survivors and without regard to statutes of limitations – to identify, process and compensate previously unpaid claims based on Jewish Holocaust era insurance policies. However, only the five European companies which signed the Memorandum of Understanding together with the German companies which were part of the German Foundation agreement (collectively, “ICHEIC companies”) provided funding for ICHEIC. These companies represented a portion of the vast European insurance market. Insurance companies representing the larger part of the market did not help fund or otherwise participate in the ICHEIC process, or no longer existed.

Nonetheless, even though the Memorandum of Understanding called for the resolution of claims against Holocaust era insurance policies issued by the companies participating in the ICHEIC process, ICHEIC's efforts went well beyond that.

First, only a small percentage of all the claim forms submitted to ICHEIC named a specific company, and few claims included any documents linking the policy in issue to the specific company named in the claim. In addition, some claims that did identify the policy-issuing companies turned out to be against companies which were neither signatories to the Memorandum of Understanding nor German insurance companies. To ensure that these claims would be treated properly, ICHEIC entered into agreements with other agencies and transferred such claims as appropriate.

Second, to ensure the broadest possible reach, when ICHEIC received anecdotal claims which did not identify a specific insurance company, it nonetheless circulated such claims to all member companies that did business in the policy-holder's country of residence.

Finally, claims brought on policies written by Central and East European companies which were defunct after the war and without any present day successor were not only reviewed by ICHEIC but, in many instances, paid through an in-house process it developed. Many insurance companies which, for example, had been located in the former Czechoslovakia, Hungary, Poland, Romania, and the former Yugoslavia, among other Central and East European countries, had issued tens of thousands of Jewish Holocaust era insurance policies prior to the war. However, such companies had been nationalized, liquidated, gone bankrupt, or otherwise went out of business. Neither the governments which took over these companies, nor their successors, have survivors for their insurance claims, nor did they provide any funding for the ICHEIC process. Nonetheless, in addition to processing claims involving the ICHEIC companies, ICHEIC took on the immense challenge of processing and making payments to claimants, even for policies issued by such bankrupt or nationalized companies, according to ICHEIC rules and guidelines, including ICHEIC valuation standards.

## 2. ICHEIC Guidelines

During negotiations with the insurance companies participating in the ICHEIC process, an endless series of obstacles had to be resolved. One such issue related to the differing data protection and privacy laws of each country – Germany, Italy, France and Switzerland – in which the insurance companies are located. In an effort to have as many names as possible identified and disclosed of those most likely to have had a life insurance policy during the relevant period and who were thought likely to have suffered any form of Nazi persecution, each country's laws needed to be addressed individually. Publication of large numbers of names, where the overwhelming majority of the individuals were neither Jewish nor Holocaust victims, was of paramount concern to European governments. Nonetheless, ICHEIC succeeded publishing the names of over 500,000 Holocaust-era insurance policy holders which were most likely to have been victims of Nazi persecution.

Another problem related to the issue of proof. Even if statutes of limitations are ignored – which H.R. 4596 seeks to establish – no court of law, for example, would or could rule in favor of an individual making a claim based on an insurance policy not presented in court. However, many Holocaust era insurance policies have been destroyed, lost or otherwise cannot be produced. Yet, ICHEIC developed and implemented a liberal evidentiary approach to deal with such documentary gaps. For example, ICHEIC agreed to pay claimants who could not produce an insurance policy

document. This is no small matter. Without an insurance policy, how is the identity of the policy holder, the face value of the policy and, most importantly, the beneficiary ascertained, so many years later? How can a court rule in favor of any claimant when such information is unavailable? Yet, ICHEIC decided, as a matter of principle, how to address such circumstances in a way that allowed the pertinent family to receive compensation for the policy.

In addition, definitive proof was rare concerning the premium payments made by a policy holder in Holocaust era insurance policy cases. This is critical information – if premium payments were not made, for example, the beneficiary would receive less than the full face value of the policy – and ICHEIC also addressed this issue in a liberal manner.

Another significant obstacle related to how much to pay on any given policy. Not surprisingly, the value of a Holocaust era insurance policy issued in a particular currency (many of which no longer exist), almost seven decades after the outbreak of World War II, required complicated determinations that necessarily varied broadly depending on available documentation and on which values and methods – out of a broad range of possibilities – were used for the calculations.

Nonetheless, ICHEIC developed a method for appraising claims. This was no easy task and made especially difficult in the face of the profound differences between the Jewish side and the insurance companies. Nonetheless, a methodology was developed and accepted by the parties, which led to the negotiated settlements and compromises essential to moving the process forward.

In sum, the ICHEIC process was a response to the ineffectiveness of lawsuits in dealing with issues raised by survivors related to their Holocaust era insurance policies. ICHEIC paid on claims in circumstances where the company was not named, the insurance policy was not produced, and no information was provided with respect to whether premiums were paid. It paid on policies which were produced, but which had been issued by insurance companies which had been nationalized or whose assets had been nationalized. It also developed an acceptable system of appraising policies. ICHEIC became the first – and, indeed, has been the only – mechanism ever to offer Holocaust victims and their heirs a place to pursue claims against insurance companies, at no cost, with no regard for any statute of limitations, even if neither the claimant nor the insurance company could produce the policy in issue. At the same time, because many European insurance companies refused to participate, the ICHEIC process did not represent the entire, nor even the majority of the, Holocaust era European insurance market.

## CONCLUSION

ICHEIC was far from perfect. When attempting to address the damage inflicted relating to the Holocaust, the most that can be achieved is an imperfect justice. Nothing can truly remedy or even adequately right the wrongs that were perpetrated. Yet, ICHEIC achieved some measure of success. Indeed, what it accomplished was without precedent:

- Prior to the ICHEIC process, there was, practically speaking, nowhere to go to recover the proceeds of unpaid Holocaust era policies. ICHEIC filled that void. It established a mechanism to identify and process Holocaust era insurance claims, even when, as was typical, claimants had no documentation;
- The ICHEIC process was at no cost to survivors, and without regard to any statutes of limitations;
- ICHEIC paid claims on policies issued by insurance companies which no longer existed, whether due to nationalization, bankruptcy or other reasons;
- An archive consisting of the over 500,000 most likely Jewish insurance policy holders is now available to survivors, historians and other researchers;
- In total, over a half-billion dollars in payments to Holocaust era insurance policy-holders and heirs, as well as to programs benefiting Holocaust survivors was distributed as a result of ICHEIC. The payments included providing critically needed home care funding for elderly and ailing Holocaust survivors; and
- The insurance companies which participated in the ICHEIC process continue to accept and process claims – again, at no cost to the claimants and regardless of any statutes of limitations. In addition, claimants may obtain the assistance, at no charge, of the Holocaust Claims Processing Office in filing such claims.

On the other hand, H.R. 4596, I fear, will not achieve its goal of providing an effective avenue to successfully compensate Holocaust victims and their heirs for unpaid insurance policies. The proposed legislation mandates that insurance companies, notwithstanding the strict, European data privacy laws (which are much more stringent than those in the U.S.), disclose the names of all policyholders during the



entire relevant period, but this extraordinarily costly effort will yield little new information regarding Jewish policyholders. This is especially the case regarding the insurance companies which participated in ICHEIC; they already have disclosed most, if not all, of their Jewish purchased, Holocaust era insurance policies. Thus, almost all policies which would be disclosed will not have been purchased by individuals who suffered Nazi persecution; many of the policies may already have been paid; and many of those not paid, will have been previously compensated

In addition, litigation of such claims will be lengthy, and the associated costs, time and effort required will prove excessive and unreasonable, certainly for elderly survivors. Most survivors will, most likely, not be alive to see the results of any of the lawsuits the proposed legislation authorizes.

While a handful of survivors and their heirs, at most, may benefit from H.R. 4596, I am also concerned that the bill's enactment will unjustifiably generate huge expectations that, in the end, will not be met, which will have a profoundly negative impact on survivors.

Finally, I am extremely concerned that the Holocaust Insurance Accountability Act of 2010 will severely damage the common goal of those looking to help survivors. It will jeopardize ongoing negotiations with governments for the continuation and expansion of critical funding to meet the vast, immediate needs of Holocaust survivors, both in the United States and worldwide. For example, German insurance companies were included in the ICHEIC process as part of the negotiations which ultimately resulted in the formation of the German Foundation, a DM 10 billion fund primarily for former slave and forced laborers. Those negotiations succeeded pursuant to various commitments by the German and U.S. governments, among others. Yet, the proposed legislation threatens to undermine such commitments. Moreover, I also worry that the support the U.S. government provides Holocaust survivors will be undermined as the German government and others lose faith in the ability of the U.S. government to keep its promises.

## **RECOMMENDATIONS**

The proposed legislation jeopardizes substantial funding for survivors in need around the world, while likely providing few claimants, at most, with insurance-related payments. As a result, I respectfully suggest that Congressional action, instead, address the following issues, which would provide critical assistance to survivors of the Holocaust and their heirs.

First, support and help implement the Terezin Declaration of July 2009 and the related "Guidelines and Best Practices for Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis,

Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945, Including the Period of World War II” of June 2010, endorsed by over 40 governments, as well as the European Shoah Legacy Institute, established as a follow-up mechanism. Through these undertakings, there are efforts under way to develop a fund to address the social welfare needs of survivors most in need worldwide, through the restitution and/or compensation of confiscated property, including heirless Jewish property.

Second, as a related matter, support ongoing negotiations with various East European countries focusing on establishing laws and/or claims processes which would enable former property owners and communities to recover, or receive fair compensation, for real property – private and communal – seized during the Holocaust and/or subsequently nationalized by communist regimes.

Third, reimbursement is still being sought from certain East European governments for claims paid by ICHEIC to claimants who held policies issued by European insurance companies that were nationalized or had their assets nationalized. Congressional assistance in the efforts to recover such funds would be extremely helpful.

Fourth, the insurance companies which participated in ICHEIC continue to process claims they received after the close of ICHEIC. In order to ensure that this undertaking continues to be properly implemented, Congress may want to consider helping to develop a mechanism to monitor the processing of such new insurance claims.

Over the years, the U.S. Congress has played a major role in attempting to secure Holocaust-era compensation and restitution, as well as to ensure that the Holocaust is not forgotten. You have the gratitude of the survivor community for such support and assistance and we hope that you will continue to provide such help in the future.

Thank you.

September 22, 2010

TESTIMONY OF JACK RUBIN  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON FOREIGN AFFAIRS  
SUBCOMMITTEE FOR EUROPE  
OCTOBER 3, 2007

My name is Jack Rubin, and I live in Boynton Beach, Florida. I want to thank Chairman Wexler, my Congressman, for holding this important hearing and for inviting Holocaust survivors to speak for ourselves about these issues of great concern. I am here to urge you in the most urgent terms possible to pass HR 1746, the Holocaust Insurance Accountability Act of 2007.

I was born in 1928 in Vari, Czechoslovakia, which was annexed by Hungary in 1938. We lived in a building where my father's general store was also located. There was a sign that said the building and premises were insured by "Generali Moldavia." I am certain that my father, who was a careful business man, had all kinds of insurance, including life insurance, because he spoke about it often. From these conversations, I even remember the name of the agent, Mr. Joseph Schwartz.

Like all Jews in our town, we were forced out of our home in April of 1944 with only the clothes on our back and one suitcase each, and taken to the Beregsastz Ghetto. There the Nazis forced everyone to turn over their

jewelry, watches, wedding rings, and hand over everything of value. We were then deported to Auschwitz, where my parents perished. I survived Auschwitz and three other camps. Needless to say, after the Holocaust, I had no way to find any papers such as insurance policies.

After ICHEIC was created, I applied because of the publicity encouraging applications. They promised to open company records and apply “relaxed standards of proof.” I filed two claims, naming my father Ferencz Rubin and my mother Rosa Rosenbaum-Rubin, and their birth years. I mentioned the sign on our building for “Generali Moldavia,” and the fact that the agent Mr. Schwartz was our agent, who also died in the Holocaust. This was all the information I had, but considering the circumstances it was certainly enough to show we had insurance.

Four years later I received a letter from Generali stating that they had no records from their subsidiaries and no records of policies in the family. This is absurd, because I know we had insurance. Yet Generali did not produce one piece of paper to justify its decision, and the ICHEIC Arbitrator did not require the company to produce any proof. He did not force them to produce records from Generali Moldavia, a known subsidiary, and he did not require them to produce information about Mr. Schwartz, the agent from our town. He just accepted Generali’s word.

Survivors are appalled by the treatment we have received from ICHEIC and other institutions. ICHEIC was controlled by the insurance companies and conducted in secret. Once again, we survivors were denied access to the truth. Stealing our money is bad enough, but concealing the truth from Holocaust survivors is a terrible thing. If our society today has any decency, it would require the companies to open their records and be fully accountable for their thefts of our families' legacies. After all, isn't this why people buy insurance? The companies betrayed us and to date, the U.S. justice system has blocked our access to the truth. I am here today to ask you to fix this by passing HR 1746, because it will require the companies to open their records, and allow survivors and heirs to go to court for the truth.

I would also be able to tell you about horror stories facing elderly, poor survivors today in my community, and throughout the United States. And the funds are not getting to those who were looted and those who need the help. The ICHEIC money we talked about. Also, in the Swiss bank case, Judge Korman allocated 75% of the Looted Assets funds to the Former Soviet Union, with only 4% for the needs of survivors in the United States, is an insult to those of us who went through the Holocaust, denying assistance to Americans just because he believes the rich here should take

care of the survivors here. This is the survivors' money, but the poor here do not have a fair chance to benefit from the settlement.

Also, the Claims Conference is sitting on hundreds of millions of dollars. Survivors do not believe there has been an adequate accounting of the property obtained from Germany and the uses of those funds. We deserve a full accounting, because survivors are suffering.

Finally, let's not forget that Germany bears primary responsibility for the rights and needs of Holocaust survivors. We call upon Congress to raise with the Administration and the German Government the fact that thousands of survivors today are not living with the dignity to which they are entitled. SS officers receive more from Germany in pensions than Holocaust survivors. We need immediate solutions, no matter what the source.

I hope you will do a complete audit of where the survivors' money has gone, because we know it isn't coming to those who were looted, or those in need.

There is a common theme in the restitution area. There has been secrecy, and the deals have been made by people we did not appoint or approve. We have been denied the truth, and that is outrageous. We survivors, who are the most affected, were not allowed to participate and the results are terrible. They are totally inadequate. We need Congress to

expose these deals and demand, as a matter of morality, a just outcome. The time for talk is over.

I have submitted a few news articles on these subjects, which I hope you will allow for the record.

Thank you very much.

# The Jewish Week

SERVING THE JEWISH COMMUNITY OF GREATER NEW YORK

(05/04/2007)

## Holocaust Era Claims: Mission Not Accomplished

Yisroel Schulman

The International Commission on Holocaust Era Claims (ICHEIC), with a mandate to help policyholders and their heirs receive monies from unpaid Holocaust era insurance claims, held its final meeting in Washington, D.C., on March 20. After nine years, ICHEIC is out of business.

In the weeks following ICHEIC's closing, there have been articles chronicling that organization's alleged successes. While those same articles mention that ICHEIC has had its share of critics, not enough thoughtful analysis has been given to the commission's real failures.

ICHEIC is often lauded for having processed, free of charge, more than 90,000 claims and compensated more than 48,000 claimants. What is not made clear, however, is that, of these 48,000 claimants, about 34,000 of them received so-called humanitarian awards of \$1,000. Only 14,000 claimants who applied to the commission were compensated because their relatives were actually determined to have bought insurance policies.

To put this in perspective, the Conference on Jewish Material Claims Against Germany recently met with German Chancellor Angela Merkel to bring to her attention the fact that the German social security administration has denied ghetto pensions to about 61,000 of the approximately 70,000 survivors who applied for such compensation. With a failure rate of over 87 percent, the German program has been rightfully and widely criticized by survivors and Jewish and humanitarian organizations. Considering that ICHEIC has done only marginally better, why hasn't there been a similar public uproar?

Over the years, ICHEIC fostered the notion that claimants were denied compensation solely because they did not have adequate documentation regarding purchased insurance policies. However, we are aware of numerous claimants (only the commission knows the precise number who fall in this category) who, in fact, had definitive proof that policies were purchased, but were nonetheless denied compensation because the commission allowed the use of "negative evidence."

For example, if a claimant had a copy of an actual insurance policy that her relative had bought from the Generali Insurance Company, but the policy information did not appear in Generali's records, the "negative evidence" would lead to her application being denied. It was ICHEIC's decision to allow the use of "negative evidence," which certainly belies the claim of Lawrence Eagleburger, the commission's chairman, that the organization's principal purpose was to find claimants and pay them.

Other examples of ICHEIC's failings include the way in which it dealt with decisions made by the Generali Trust Fund (GTF). The trust fund was created to process claims concerning Generali and, in that capacity, had the authority to determine if claimants had compensable claims. As early as November 2002, ICHEIC had concerns that GTF's performance was below acceptable standards and, in late October 2004, the commission terminated its relationship with the trust fund, citing GTF's gross incompetence. Despite acknowledging GTF's sub-par performance, ICHEIC refused to review any of the fund's final decisions, thereby denying



claimants a fair decision-making process.

There has been mention in the press that ICHEIC, over its nine-year lifespan, spent approximately \$100 million on administrative expenses. Because the commission distributed about \$300 million to the 48,000 claimants noted above, for every \$3 that went to the heirs of insurance owners, about \$1 went to keep ICHEIC's bureaucracy afloat. The commission, which was funded with about \$550 million, is going out of business with monies left over.

According to various press reports, ICHEIC has disbursed between \$174 million and \$200 million through a humanitarian fund to support Holocaust education and needy survivors. Unanswered questions include who made these "humanitarian" decisions and, indeed, whether it was ever in ICHEIC's mandate to disburse money for philanthropic purposes.

Among those benefiting from the commission's largesse is a program called the "Initiative to Bring Jewish Literacy to Youth in the Former Soviet Union." From 2004 to 2006, ICHEIC spent \$3.4 million to send children to camp in St. Petersburg and Moscow. While a good cause, one would be hard-pressed to find a true nexus between that grant and ICHEIC's mission to facilitate the processing of insurance claims from the Holocaust period.

At the final commission meeting, Chairman Eagleburger is quoted as having said that ICHEIC "has achieved its goal of bringing a small measure of justice to those who have been denied it for so long." As a lawyer who has closely worked with ICHEIC claimants, I sadly disagree. For nine years, ICHEIC failed the very people it was created to serve. n

*Yisroel Schulman is the president of the New York Legal Assistance Group (NYLAG), a not-for-profit organization. Laura Davis and Phyllis Brochstein, attorneys with NYLAG, contributed to this column. Based in New York City, since May, 2000 NYLAG has provided free legal services to over 50,000 Holocaust survivors and their heirs. [www.nylag.org](http://www.nylag.org)*

**Special To The Jewish Week**

**The New York Times**  
nytimes.com

February 28, 2007

## Settlement Approved in Holocaust Victims' Suit Against Italian Insurer

By JOSEPH B. TREASTER

A federal judge approved a settlement of a class-action suit yesterday against an Italian insurance company, ending a long-running dispute over payments on life insurance policies taken out by Holocaust victims.

The settlement provides less money than Holocaust survivors and relatives had hoped to receive from the company, Assicurazioni Generali, and it significantly raised the chances that the insurer would be able to avoid public scrutiny of its records from the Nazi era.

But Judge George B. Daniels of Federal District Court in Manhattan said he was convinced that the deal was the best the survivors and their relatives could get.

"The settlement is not perfect," he told a room of lawyers and a handful of survivors and relatives. But he said that for most families who had bought coverage from Generali, it "may be their only real opportunity for any monetary recovery."

Lawyers representing the survivors had reached an agreement with Generali last summer after another federal judge dismissed their claims and they decided the odds of winning an appeal were low.

Judge Daniels had interrupted an initial hearing on the fairness of the settlement on Jan. 31 after Samuel J. Dubbin, a Miami lawyer opposing the settlement, appealed for more time to give survivors and relatives a chance to look for evidence to support their insurance claims in long-sealed Holocaust-era archives in Bad Arolsen, Germany.

The United States and 10 other countries that control the archives have agreed to open them and are meeting in the Netherlands on March 7 and 8 to discuss speeding up the process.

At Judge Daniels's urging, Generali and lawyers for survivors and relatives amended their agreement to extend the deadline for filing claims to take account of evidence found at Bad Arolsen until Aug. 31, 2008. The judge said yesterday that the extension eliminated his major concern. The deadline for all other claims remains March 31.

Before the settlement Generali had paid about \$100 million in claims on Holocaust-era policies, mainly through a commission in Washington. It agreed to pay \$35 million more as a result of the settlement. The company said the \$135 million covered 5,500 claims.

Generali said it had received 3,300 more claims as the settlement has been pending, and Robert A. Swift, a Philadelphia lawyer for the Holocaust survivors, estimated that the company would pay another \$10 million on those and other claims made before the deadlines. Generali will pay about \$4 million in legal fees.

Mr. Dubbin has contended that Generali sold policies worth billions on which it has never paid claims. But Generali and the lawyers in the class-action suit take issue with Mr. Dubbin's estimates.

Mr. Dubbin also argued that Generali had failed to adequately publicize the settlement. He and other advocates for the survivors said that because Generali has refused to publish a full list of its policyholders, tens of thousands of Holocaust survivors and relatives have been unaware that they had reason to file a claim -- with the approval of the settlement they would be foreclosed from ever doing so.

Generali has published the names of many policyholders, but contends that survivors and relatives have other ways of knowing whether they are eligible to file claims.

Mr. Swift, who helped draw up the agreement, used almost the same words as Judge Daniels in characterizing the settlement.

In a statement distributed before the hearing, Generali said it viewed the settlement "as an important step in its longstanding commitment to bring fair closure to the Holocaust-era claims process."

In the late 1990s, American lawyers filed lawsuits against more than 20 European insurance companies, accusing them of refusing to pay claims on billions of dollars in policies they had sold to people who became victims of the Holocaust.

The other lawsuits were either dropped or resolved. The settlement ends the biggest case against Generali. But a handful of lawyers, including Mr. Dubbin, are continuing to appeal the earlier dismissal of a group of lawsuits against the insurers. In dismissing the case, Judge Michael B. Mukasey cited a Supreme Court ruling that dealing with Holocaust claims in United States courts could interfere with the president's ability to resolve international disputes.

In an interview, an aide to Representative Ileana Ros-Lehtinen, a Republican of Miami, said the lawmaker was planning to introduce legislation that would require Generali and other insurers to publish lists of policyholders -- a longstanding request of survivors and relatives -- and would attempt to provide jurisdiction for European insurance cases in American courts.

Generali says its policy is to pay valid claims and has denied accounts by Holocaust survivors that its representatives demanded copies of policies from people who had lost everything and death certificates for policyholders who died in camps.

In the settlement, the company acknowledges no wrongdoing.

"This is a sad day for Holocaust memory and historical justice," said Thane Rosenbaum, a son of Holocaust survivors and a professor at the Fordham University law school. "The only entity that really benefited from this is Generali. They avoided having to pay tens of thousands of claims and they avoided opening up their archives and historical records to reveal what happened, how and why."

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# The Jewish Week

SERVING THE JEWISH COMMUNITY OF GREATER NEW YORK

(06/29/1997)

## **'Phantom Rule' May Have Limited Holocaust-Era Awards To Claimants**

Former arbitrator says policy that should have favored survivors and heirs was not applied in many cases.

Stewart Ain - Staff Writer

When a commission investigating Holocaust-era life insurance policies ended its work in March after nine years, it boasted that it had awarded more than \$300 million to survivors and their heirs.

Now, a former commission arbitrator is criticizing the group's work, alleging that a "phantom rule" was used by some of the dozens of arbitrators, accounting in part for the denial of 84 percent of all claims filed.

The arbitrator, Albert B. Lewis, who is also a former New York State insurance superintendent, is calling for a reopening of these cases.

The "phantom rule," as Lewis described it, was that without an actual insurance policy in hand, either from the company or the claimant, the onus was on the claimant in seeking financial redress.

In fact, though, when the commission was established, the actual rules called for a more sympathetic stance toward the survivors and their heirs, specifying that there would be "relaxed standards of proof" favoring the claimant in determining the awards.

Lewis's comments follow that of other critics of the International Commission on Holocaust-Era Insurance Claims (ICHEIC), who have pointed out the wording of the 1998 memorandum of understanding signed by the six major European insurance companies that provided the money. The memorandum said the commission "shall establish 'relaxed standards of proof' that acknowledged the passage of time and the practical difficulties of the survivors, their beneficiaries and heirs, in locating relevant documents."

Lewis told The Jewish Week that Katrina Oakley, the commission's law administrator in London, had tried to pressure him into changing two awards that he granted to claimants. She complained that his interpretation of "relaxed standards of proof" differed from that of other arbitrators.

In an e-mail she sent Lewis on Nov. 26, 2003, Oakley wrote that she was "concerned" that his "interpretation is sufficiently different that it would set a precarious precedent."

Oakley wrote also that in cases where neither the heir nor the company was able to prove a policy's existence, "the appellant has a heavy burden of proof that" such a policy was issued.

Lewis said he refused to change his ruling and that the appellants were paid because the "phantom rule" Oakley cited "was never adopted by ICHEIC, nor was it included in the arbitrator's handbook."

"Ms. Oakley had no authority to promulgate any of ICHEIC's rules," Lewis said.

He relied instead, he said, on rules adopted by ICHEIC that said arbitrators should be more lenient, following the "principles of equity and justice." And he quoted the commission's chairman, Lawrence Eagleburger, as saying "there is intentionally built into the standards wide latitude and flexibility."

But Oakley delayed granting the contested awards, prompting Lewis on June 15, 2004, to send her an e-mail saying he considered her actions a "blatant attempt to pressure me as an arbitrator to reverse proposed monetary awards to claimants. It was a flagrant violation of the rules and it denied the claimants due process. ... Your unauthorized conduct in delaying [the] award during which [the claimant] is receiving no interest is an affront" to those who drew the rules and acted as arbitrators.

Elan Steinberg, a former member of the ICHEIC board, said he had never heard of the "phantom rule" and termed it a "smoking gun" for those who are still seeking payment of their relatives' Holocaust-era life insurance policies.

"We had agreed that we would use relaxed standards of proof, which is contrary to the adjudicator's letter," he said, referring to Oakley.

Steinberg, who left the commission in 2004, said he was “deeply saddened and troubled” by the high percentage of claim rejections.

“There should be no statute of limitations on justice,” he said.

“There is no question in my mind that these issues, which touch on the moral and ethical obligations we have to our Holocaust martyrs, must remain open.”

Sidney Zabudoff, a retired U.S. government economist who was a consultant to Jewish claims restitution groups and has been highly critical of ICHEIC, said he had never before heard of the “phantom rule.”

Although he said it was “always clear” that documentary proof of each Jewish life insurance policy could never be found – he estimated that there were 870,000 of them in 1938 in what was later Nazi-occupied Europe – the commission’s rejection of 84 percent of claims “sounds a little high.”

“ICHEIC rules clearly state that there was to be a relaxed standard of proof and that if any evidence existed at all, the burden of proof shifted to the company,” he said.

The rule Oakley mentioned in her e-mail, Zabudoff said, “is absolutely strange because it is against ICHEIC’s precedent.. I never heard anybody say that.”

Lewis said he was unable to review the cases before him in a detached way.

“You have to be made of wood not to feel the pain,” he said. “One woman of six siblings is living in Borough Park and said she had a sister who had a \$10,000 policy. I believed her. She said she went to five concentration camps and when she was liberated she couldn’t walk. She asked me to hurry up [with his review] because if she got something [from the policy] she would like to share it with her grandchildren. .... Is there an emotional involvement? Yes. Should I tell her she’s a liar? I gave her \$104,000. It was my last award. They were upset with that one too.”

The \$104,000 reflected the price of the insurance payoff adjusted for inflation over more than 60 years.

After his ruling, Lewis said he learned that the woman wrote to ICHEIC “wanting to know my mother’s name because she wanted to make a special prayer for her memory. ... If I had to do it again, I

would.”

Asked why he was coming forward now, Lewis said he was not aware of the high percentage of rejected claims until the commission released the figures in March. He said that of the more than 90,000 claims made, 78,814 – or 84 percent – were denied.

What’s more, 34,158 of the claimants received a \$1,000 humanitarian award, seemingly a token amount.

“Is a humanitarian award a mendicant award?” he asked.

“I’m appalled,” Lewis continued. “It indicates to me that something is wrong, and part of what might be wrong is that phantom rule that was put into the system.

“When ICHEIC was formed, [heirs] were urged to file their claims. Thus, they were given hope by ICHEIC that their claims would be heard, only to have them denied by ICHEIC. Is this tantamount to being indirectly labeled as fraudsters or liars? How much abuse must they take?”

Samuel Dubbin, a Miami lawyer who represents Holocaust survivors and their heirs, said he was aware that there had been “a lot of inexplicable denials” of claims. He noted that the ICHEIC process “resulted in the payment of less than 3 percent of all the policies owned by Jews at the beginning of World War II.”

Zabludoff said that of the more than 90,000 claims filed, only 16,000 were offered settlements as a result of documentary evidence or because of sketchy documentation that could be pieced together to prove a claim.

Lewis is calling for survivors and heirs to be able to press Holocaust-era claims in the courts, and he said he would ask the National Association of Insurance Commissioners to address this issue once more. He noted that the European insurance companies only began to address this issue after state insurance commissioners, who regulate the insurance industry in the United States, warned them that their Holocaust claims practices jeopardized their licenses in the U.S.

Dubbin noted that Congressional legislation is now being written that would require insurers to disclose all Holocaust-era policies and permit heirs to pursue their claims through the courts. Few names of Jewish policyholders from Eastern Europe were ever

published, despite the existence of ICHEIC. It is estimated that the value of those Holocaust-era policies is between \$17 billion and \$200 billion, according to a draft of the bill.



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# The Jewish Week

SERVING THE JEWISH COMMUNITY OF GREATER NEW YORK

(07/06/2007)

## Probe 'Phantom Rule,' Says Congressman

Rep. Engel, sponsor of Holocaust-era insurance disclosure bill, says former arbitrator has raised 'serious allegations' about denied claims.

Stewart Ain - Staff Writer

An investigation should be launched into charges of a so-called "phantom rule" favoring insurance companies being improperly used to decide Holocaust-era insurance claims, according to Rep. Eliot Engel (D-Bronx).



Engel was responding to a claim by Albert Lewis in The Jewish Week that he was pressured into applying this rule while he served as an arbitrator for the International Commission on Holocaust-Era Insurance Claims (ICHEIC).

"His charges should be looked into" by Congress or the Justice Department, Engel told The Jewish Week. "These are very serious allegations."

Lewis, a former New York State insurance superintendent, said he believes the "phantom rule" may have played a role in the commission's decision to deny 84 percent of all claims it reviewed.

Engel said he is co-sponsoring a bill that would require Holocaust-era insurance companies to disclose the names of all Holocaust-era policies and to permit federal courts to consider claims stemming from unpaid insurance claims.

ICHEIC, which was created to handle all Holocaust-era insurance claims, ceased operations earlier this year after saying the deadline for filing claims had ended and that it had resolved all outstanding claims. In all it awarded more than \$300 million to survivors and their heirs.

"You cannot put a timetable on justice," Engel insisted, "when we're talking about crimes as monumental as the Holocaust. In no way could you ever have a statute of limitations ... While some people want to slam the door on it and move on to more pleasant things, the victims and justice" should not allow that.

But passage of such legislation would do no more than "give rise to decades of further litigation on top of all the litigation that has already occurred," according to Peter Simshauser, a lawyer representing Assicurazioni Generali, the largest insurance writer at that time in Europe and one of six major European insurance companies that

provided the money.

He said claims had already been resolved through the actions of organizations such as ICHEIC that had been created by both the Bush and Clinton administrations.

“Generali has paid more than \$170 million with respect to these claims in reliance on those policies [of the Bush and Clinton administrations],” he said.

Asked about the high percentage of claims that had been rejected by ICHEIC, Simshauser insisted that Generali “was audited by independent authorities, including prominent international accounting firms, which have verified that its historical records are complete and enabled it to make a determination of which policies were in effect in 1936 and thereafter. And those findings were accepted by ICHEIC and its members, including State of Israel and the insurance commissioners in the United States.”

Another attorney involved with the case said the insurance companies “bent over backward” to side with claimants, but that many of the claims were invalid, accounting for the high percentage of rejected claims. “Standards were lenient, but some evidence was required,” said the attorney, who asked not to be named.

Nevertheless, Leo Rechter, director of the National Association of Jewish Child Holocaust Survivors, said he knew of individuals who submitted claims to collect the death benefits of their family members and were rebuffed because they had no documentation.

“Very few people kept the actual policy,” he said. “When you are running for your life, you don’t want to identify as a Jew.”

Alex Moskovic of Sound Hope, Fla., said he applied to ICHEIC when it was established in 1998 and didn’t receive a reply. He said he later saw the name of his father, Joseph Moskovic of Sobrance, Hungary, and two uncles — along with their hometowns — on the Web site of two insurance companies.

“In 2001 I received a \$1,000 check from a humanitarian fund” from ICHEIC, Moskovic said.

He said he believes he should have received more than that because “we had a store and two houses and were pretty well off. I was 13 when we were taken away and I remember them [his relatives] talking about policies.”

But Moskovic said he had no further details.

Esther Finder of Rockville, Md., president of the Generation After in Washington, D.C., said her organization and others have been sending letters to House members asking them to support the legislation.

Told Generali's position that its historical record is complete, she said: "I don't know that all the records have been made available. There is always another archive opening here and another there. The archive in Vienna just became available. It could be that not a single piece of paper is in there having to do with insurance claims, but we still need to open the process. ... I'm tired of hearing everyone's assurances. I'd like to see for myself that there is no paper in there. Show me."

Lewis, the former ICEIC arbitrator, provided The Jewish Week with copies of e-mails he said he had received from Katrina Oakley, the commission's law administrator in London, who suggested that he reconsider his decision to pay two claimants. (See June 29, page one.) Oakley said the two claimants didn't have copies of the policies and none of the insurance companies in ICEIC claimed to have a record of those policies, therefore they should be denied.

Oakley cited the actions of another arbitrator who denied similar claims, noting that the rule is that when no written proof exists, the burden on the claimant is a "heavy one."

But Lewis said no such rule existed. And in a note to Oakley, Lewis wrote that he reviewed that arbitrator's records and found that he had granted awards "where there was no written evidence of a policy" simply based on anecdotal evidence.

"I had accepted such evidence in granting my monetary awards," Lewis wrote.

He then questioned why this arbitrator's other decisions granting awards based solely on anecdotal evidence was not sent to him.

"Were any other arbitrators similarly pressured by you and changed their awards?" he asked.

## Cleveland Jewish News March 13, 2003

### Debate rages over aid to survivors

By MARILYN H. KARFELD Staff Reporter

*Of the estimated 2,000 to 3,000 Holocaust survivors currently living in Cleveland, a small number are needy. Sometimes, say social workers, they're forced to choose between paying for medicine or paying for heat.*

*About 30 poor survivors here receive limited home care services paid for by a grant from the Conference on Jewish Material Claims Against Germany, referred to as the Claims Conference. Others are turned away due to limited funds.*

*The size of the Claims Conference grant to Cleveland and other cities like Miami, with large survivor populations, is the subject of a disturbing debate in the Jewish community. Some Jewish leaders are loudly criticizing the Claims Conference for what they call a failure to distribute to Holocaust survivors all the funds raised in their names.*

*Since 1993, the Claims Conference has devoted 80% of the Holocaust restitution money it receives to care for needy survivors. The remaining 20% goes toward Holocaust remembrance, research and education.*

*In response to widespread rebuke from Jewish leaders that 100% of the money should go to poor, frail survivors, the Claims Conference has recently told Jewish news media that it most likely will examine its distribution split at its July meeting in New York.*

*The Claims Conference was founded in 1951 to distribute reparations from Germany and other sources to Jewish victims of the Holocaust. It's also the agency responsible for allocating the proceeds from the sale of unclaimed property in the former East Germany that the Nazis seized from Jews.*

*Last week for the first time, the Claims Conference posted on its Web site an accounting of the \$82 million it received in 2002 from the East German property and the German fund for forced and slave laborers.*

*About \$76.8 million was allocated to organizations that care for needy survivors worldwide, while \$9.5 million went to Shoah research, education and documentation. The latter included grants to Yad Vashem, Israel's Holocaust memorial, and to youth visiting the sites of concentration camps. The organization also said it allocated \$4.2 million from the Swiss banks settlement for emergency assistance to needy survivors in 20 countries.*

*The Jewish Council for Public Affairs, a consortium of local and national organizations, last week joined a growing chorus of leaders criticizing how the Claims Conference spends what they say is, in essence, the survivors' money. Holocaust education and archival programs should only receive funds after all the survivors' present and future needs are fully met, the organization said.*

*Officials from United Jewish Communities (UJC, the umbrella organization of North American federations) and individual federations around the country have also weighed in on the controversy. The heads of the federations in Miami, Los Angeles, Boston and New York have met with Gideon Taylor, Claims Conference executive vice president, to discuss the claims of the survivors.*

*Also present was Cleveland's Stephen H. Hoffman, president and CEO of UJC and former longtime chief professional officer of the Jewish Community Federation of Cleveland.*

*In the past, earmarking funds for education and remembrance has been a wise policy, Hoffman notes. But with the establishment of Yad Vashem, the U.S. Holocaust Memorial Museum and other institutions, "the original mission in this area has been accomplished."*

*How much more money should be raised for Holocaust remembrance now must be balanced against the needs of survivors, he says.*

*While survivor groups have been criticizing the Claims Conference for some time, a firestorm erupted in June 2002, when Israel Singer, Claims Conference chairman and the son of Holocaust survivors, wrote an essay in the Jewish opinion magazine Sh'ma. He suggested a new organization be created to spend any leftover Holocaust restitution "to rebuild the Jewish soul and spirit" and "ensure the continued existence of the Jewish people" through education and other projects.*

*Singer also suggested using the restitution money for a voucher system to allow every Jewish child to attend Jewish day schools.*

*Survivors and Jewish leaders lashed out at Singer, saying the Claims Conference was seeking to perpetuate itself as an organization with funds that rightfully belong to survivors.*

*Others came to Singer's defense, agreeing that those who perished in the Holocaust would want remembrance and Jewish education to be their legacy, not only social welfare to the Nazis' victims.*

*Claims Conference officials say they don't have enough money to take care of all survivor needs. There are an estimated 500,000 to 800,000 Holocaust survivors worldwide. Of the 127,000 to 145,00 survivors who live in the U.S., about 40% rely on Medicare, Social Security and reparations to cover their rising health care costs, JTA reports.*

*The federations, Claims Conference officials insist, should be raising more money to aid survivors.*

*Hoffman does not think that is the federations' mission. "The Claims Conference is designed to address the needs of survivors in particular," he notes. "The federations have responsibility for all older persons in need."*

*The ugly specter of Jews fighting Jews is nothing new, he says. Every year in the community there is combat over the distribution of Jewish welfare campaign funds. What is new is how public these arguments have become, he says.*

*"It's uncomfortable to see it played out in the Wall Street Journal and The New York Times," he admits. "No one likes to see the family argument in print, but we'll get over it."*

*Cleveland Robert Goldberg, chairman of the UJC executive committee and its top volunteer, has urged the Claims Conference to resolve the controversy. "There are survivors in this country who are in need of home health care and not all of them are getting it," Goldberg says. He's asked the Claims Conference for a detailed accounting of the value of all its remaining East German property.*

*Holocaust and Jewish education is a worthy project, Goldberg adds. "But if I had to choose between helping a survivor and anything else, I would lean toward helping the survivor. That is our number one obligation."*

*Federations around the country are currently helping the survivor community, Goldberg says. But federations can only raise so much money.*

*By speaking out, Goldberg feels he and other federation leaders will ultimately persuade the Claims Conference to increase grants to survivors. "You can't force anybody to do anything, but we can drive them crazy," he says.*

*Through last September, the Claims Conference has received over \$1 billion from the German-Jewish property, either through sale of the property or compensation from Germany, The Jewish Week reports. Subtracting payments to rightful property owners and those expected to still make claims, and setting aside money for future survivor needs, the Claims Conference has thus far distributed \$451 million for survivor assistance. That was 80% of the available money, they say.*

*In Cleveland, the Holocaust Survivors Program of the Jewish Family Service Association receives \$150,000 annually from the Claims Conference. That pays for staff salaries, case management, assistance with reparation forms, a drop-in center called Europa Café, and up to six hours of home care weekly for about 30 people.*

*According to Michelle Keller of the Holocaust Survivors Program, she and her staff have seen about 800 to 1000 Holocaust survivors, many of whom just stop by to receive help in filling out the reparations forms. Others are alone and destitute.*

*"Some go without medication," says Keller. "They will choose heat over filling a prescription. Of if they need a pill twice a day, they will take it once a day."*

*For these people, Keller arranges for groceries to be delivered, provides transportation to link the isolated to the outside world, and sets up a schedule of home assistance, including personal care, laundry and light housekeeping. Most people get only two hours a week of help.*

*"Of course we could use more money," says Sue Biagianti, JFSA director of elder care services. "There's no way we can meet everyone's need."*

*Scarce funds mean some survivors who could use the aid had to be turned away. Others receiving help were removed from the program, Biagianti says.*

*The Claims Conference's stance is "incredibly disappointing," says former Cleveland Mark Talisman, a founding vice president of the U.S. Holocaust museum, who has been working on this problem pro bono for almost four years.*

*"Needy survivors are blown off and don't get the help they need. When billions of dollars are negotiated on behalf of survivors and they don't get the benefit of those dollars, it's unconscionable," says Talisman, who arranges exhibits and other projects through his Project Judaica Foundation.*

*Some survivors also don't think the Claims Conference represented their best interests in negotiating for reparations from the Swiss banks that confiscated Jewish wartime accounts and German industries that exploited slave labor.*

*In May 2001, the Holocaust Survivors Foundation, based in Florida and comprised of about 50 grass-roots survivor groups, appealed to Judge Edward Korman, who is overseeing the Swiss banks settlement. The foundation asked for additional money to help with the human services needs of U.S. survivors, says Sam Dubbin, Miami attorney for HSF and chairman of the Miami Jewish Community Relations Committee.*

*The judge had allocated 75% of the money - \$67 million - to survivors in the former Soviet Union and less than 1% - or \$215,000 - to those in the U.S., Dubbin says. While there is no doubt great need in the former Soviet Union, U.S. survivors call that distribution unfair.*

*The HSF eventually withdrew its appeal of the Swiss settlement with the understanding that U.S. survivors would get more help from a secondary distribution of leftover restitution funds, Dubbin says. So far survivors are still waiting.*

*The Association of Jewish Family and Children's Agencies has said \$30 million annually for five years would provide adequate home care for about 8,000 needy survivors in the U.S.*

*"For the Jewish community to stand by and allow restitution money to be hoarded so their fund-raising burdens can be alleviated now and in the future is wrong," says Dubbin. "The general community has an obligation for Holocaust education. It's a bizarre concept to say take the money and pay for their (survivors') memorial while their (immediate) needs are going unmet."*

*The average age of survivors is now 80; they are dying at a rapid pace, sometimes poor and alone. As Goldberg notes, the problem of assistance to survivors is one that will not be with us for too many more years. "I would not want the lesson to our children to be that we did not take care of the survivors."*



The Global News Service of the Jewish People

## Survivors still seek justice

Edwin Black

Holocaust survivor groups and key congressional leaders have joined two separate issues — the opening of the Bad Arolsen archives on Holocaust victims and the quest to recover unpaid insurance claims — into a single cause.

NEW YORK (JTA) — Reaction to recent revelations of corporate complicity, unrevealed insurance company involvement and the great number of IBM punch cards among the papers in a secret archive in Bad Arolsen, Germany, have reignited a grass-roots campaign among Holocaust survivors to recover Nazi-era insurance claims against companies such as the Italian insurance giant Generali.

Following a series of revelations that began last year in Jewish media, grass-roots survivor and second-generation groups in Miami and New York have mounted a fierce campaign in Congress to supersede international agreements brokered by the State Department to settle insurance claims through the International Commission on Holocaust Era Insurance claims (ICHEIC), as well as a variety of adverse Supreme Court rulings that have denied survivors the right to sue to recover policy claims or disgorge profits from the insurance companies.

The groups have used revelations about the unreleased Bad Arolsen records as a rallying point to prove that their insurance claims have been pushed into oblivion. Key congressional leaders agree and have promised swift action.

Thus, two separate issues — the opening of the Bad Arolsen archives and the quest to recover unpaid insurance claims — have been joined into a single cause among survivor groups and key congressional leaders.

The latest round of efforts began last fall, when officials of survivor groups unsuccessfully demanded that ICHEIC and other authorities postpone the final disposition of claims pending further research in the International Tracing Service files at Bad Arolsen. The groups include such elected bodies as the Miami-based Holocaust Survivors Foundation USA and the Queens, N.Y.-based National Association of Jewish Child Holocaust Survivors.

The International Tracing Service, or ITS, was established by the Allies after the war to help families trace Holocaust and war victims. The Allies forwarded millions of captured documents to

the facility in Bad Arolsen. The International Red Cross was given custody and control of the archives, which provided information on individuals only to survivors and their families. A typical family request could take years to process.

In January, Holocaust survivors petitioned federal Judge George Daniels to reject a settlement with Generali because ICHEIC had failed to publish the names of all Jews whom the company insured before World War II. The petition, which included numerous quotations from the Jewish media about Bad Arolsen's insurance documentation, decried the alleged rush to judgment.

Judge Daniels temporarily delayed a decision, but ultimately finalized the permanent settlement with a limited extension for claims based on discoveries that might emerge from the Bad Arolsen archive.

Having lost in court — and convinced that established Jewish organizations would not aid them — survivor groups lobbied Congress to link the campaign to open Bad Arolsen to the separate campaign to recover insurance claims and compel disclosure of the names of those insured.

On March 28, U.S. Rep. Ileana Ros-Lehtinen (R-Fla.) introduced the Holocaust Insurance Accountability Act of 2007, to enthusiastic support on both sides of the aisle.

The act seeks to supersede international agreements brokered by the State Department to settle insurance claims through ICHEIC. The bill concludes that ICHEIC, which is due to terminate operations soon, "did not make sufficient effort to investigate" or compile the names of Holocaust-era insureds or the claims due to survivors. The bill adds that recent media disclosures about the contents of Bad Arolsen have given new justification to such legislation.

In response, a representative for ICHEIC said the commission had accomplished its mission of identifying and settling unpaid Holocaust-era life insurance claims by processing more than 90,000 claims and distributing more than \$306 million to more than 48,000 claimants. More than half of the funds distributed via ICHEIC were the result of ICHEIC's archival research and matching work, the representative said.

Still, Ros-Lehtinen's bill would require insurers to disclose comprehensive lists of Jewish policyholders from the Nazi era. The legislation also would enable federal lawsuits to recovery money from insurers, thus overruling ICHEIC's final word and a variety of Supreme Court rulings that have denied survivors' rights to sue or gain access to policyholder names.

The proposed law thus would trump both the executive and judicial branches on Holocaust-era insurance.

The same day that Ros-Lehtinen's bill was introduced, Rep. Robert Wexler (D-Fla.), chairman of the House Foreign Affairs Committee's Subcommittee on Europe, convened an extraordinary hearing on Bad Arolsen. The purpose was to orchestrate congressional pressure on the 11 governments — the United States, France, England, Belgium, Greece, Luxembourg, Netherlands, Poland, Israel, Italy and Germany — that control the ITS to rush full access to its archives, providing the insurance information that has been submerged for decades.



Members of the Foreign Affairs Committee sat stony and grim-faced, some holding back tears, as the hearing untold about the Bad Arolsen archives and their impact on survivors' decades-long effort to recover their insurance claims. Survivor David Schaefer of Miami, who admitted he was "emotionally overcome," spoke of impoverished survivors in South Florida who cannot afford housing or medicine because their insurance payouts were first denied by the insurance companies and then by ICHEIC.

"I am begging this Congress," he implored, "to please believe us. We have been wrongly stripped of our pride and property."

Leo Rechter of Queens pleaded, "Open up Bad Arolsen to expose the Holocaust profiteers."

Rep. Albio Sires (D-N.J.) held back tears both in the hearing room and in the corridor. Wexler promised to fast-track legislation and action to open Bad Arolsen.

"We will take the next step and then the next step, and then the next step," Wexler said.

**The New York Times**  
nytimes.com

*March 14, 2004*

## **For Holocaust Survivors, It's Law Versus Morality**

By ADAM LIPTAK

**I**N 1998, after Swiss banks agreed to pay \$1.25 billion for keeping the property of victims of the Nazis and for laundering the profits of Nazi slave labor, the question arose: how should the money be spent, given that only part of that sum could be traced back to individual who had their money stolen?

On Tuesday, a federal judge in Brooklyn ruled that the poverty of Holocaust survivors in the former Soviet Union required the bulk of the available money, saying that current need is more important than perfect restitution. In essence, he said survivors who live in richer countries should receive less than those in poorer ones.

But that answer leaves some people, including many Holocaust survivors, angry and frustrated. "The whole point of restitution is to compensate people for their actual suffering at the time of the crime," said Thane Rosenbaum, a law professor at Fordham University and the son of Holocaust survivors.

History rather than charity should supply the guiding principles, said Mr. Rosenbaum, the author of a forthcoming book, "The Morality of Justice," which argues that the legal system often fails to achieve moral results. The Swiss bank settlement, he says in the book, is such a case.

"From a moral perspective, it's the victims' money," Mr. Rosenbaum said, adding that it is up to survivors to determine how the money should be used.

Edward R. Korman, the chief judge of the federal district court in Brooklyn, acknowledged the difficulty of the problem. "A comparison of needy survivors is by definition an odious process," he wrote in the decision issued last week. But morality required him, he said, to send some 70 percent of what may amount to \$400 million to survivors in the former Soviet Union, and only 4 percent to survivors in the United States.

Of the 900,000 or so Jewish survivors of Nazi persecution, 19 percent to 27 percent live in the former Soviet Union while 14 percent to 19 percent live in the United States. Those in the former Soviet Union, the judge wrote, live in desperate poverty. The poverty of

some American survivors is by contrast "clearly less pressing," he said, given the public assistance and private charity available to them.

But Samuel J. Dubbin, a lawyer for the Holocaust Survivors Foundation-USA, which says it represents more than 50 organizations and 20,000 American survivors, objected to the judge's reasoning.

"You can't say that a survivor in need here is less worthy than a survivor in need in the former Soviet Union," he said. "The reason you can't say that is that this is survivor money. Maybe you could say that if this was community money, if this were charity."

Instead, the foundation asked Judge Korman to base future distributions on pro rata allocations to the nations where large numbers of survivors live and only then require distribution within those nations to the neediest survivors.

"There's not enough money to hand out to all the survivors, unfortunately," said Leo Rechter, a 76-year-old retired banker who was born in Vienna and spent the war in hiding. "The next best solution is that all the needy people be taken care of."

"The percentage of survivors' money in each country should be allocated to that country," said Mr. Rechter, whose father died at Auschwitz, "and from that money the needy people there should be taken care of."

Judge Korman rejected that and other alternatives. He wrote that trying to adjudicate claims individually would be unwieldy, expensive and in many cases impossible. A simple pro rata distribution, on the other hand, would yield "literally pennies to each of the millions of individuals" victimized by the Nazis, including all survivors and their heirs. He called the hybrid solution proposed by Mr. Dubbin and the survivors' foundation frivolous and inconsistent with law and morality.

Should other lawsuits for historical wrongs succeed, the problem in the Swiss bank case is likely to recur. Burt Neuborne, who represents the plaintiffs in the settlement, has written that some claims should by their nature give rise to indirect compensation in the form of social programs.

For instance, he said, if lawsuits seeking damages for American slavery ever produce damages, the proper response may be affirmative action or providing money to assist for poor blacks.

And Stuart E. Eizenstat, deputy treasury secretary from 1999 to 2001 and the author of "Imperfect Justice: Looted Assets, Slave Labor and the Unfinished Business of World War II," an account of the negotiations leading to the settlement, said such suits have an important moral and political aspect that may call for ignoring some usual legal remedies.

"A purely legal response," he said, "does not work."

In this case, all agree that the dispute needs a speedy resolution. The average survivor is 77 years old if living in Israel and 84 if living elsewhere. Their numbers, according to a report issued in 2000 by the court-appointed special master in the case, Judah Gribetz, are projected to fall by 6 to 8 percent each year through the end of the decade and faster afterward.

# The Jewish Week

SERVING THE JEWISH COMMUNITY OF GREATER NEW YORK

(08/24/2007)

## Claims Conf. Revises Old Funding Formula

*An added \$100 million to go to survivors over four years, as controversial Holocaust education funding is frozen.*

**Stewart Ain - Staff Writer**

With no fanfare and little debate, the Claims Conference has overturned its controversial 17-year policy of setting aside 20 percent of its allocations for Holocaust education.

As a result, the group has decided to pump another \$112 million into social-service programs for survivors over the next four years while freezing funds for educational, documentation and research projects at \$18 million annually.

The 80/20 formula — 80 percent for survivor benefits and 20 percent for education programs — will be applied only to \$90 million of the conference's yearly allocation, the amount it had been distributing since 2003.

Julius Berman, chairman of the Conference on Jewish Material Claims Against Germany, said the action was taken last month at the group's annual meeting "because of the crying need for social welfare programs as survivors get older and sicker."

But Roman Kent, a survivor and the group's treasurer, said the move was in response to "pressure" from survivors. He said he spearheaded the effort to revise the allocation distribution.

"As long as survivors are in need, they come first," Kent said he has argued. "Even the rabbis acknowledged that if you have a sick man, you could break the sanctity of the Shabbos to help the sick."

Samuel Dubbin, a Miami lawyer who represents survivors, noted that the Claims Conference board met just a month after an Op-Ed article in *The New York Times* questioned the millions of dollars the group had spent for education, including "\$700,000 to a 'consultant' — a friend of the organization's president — who, in an interview with *The Jewish Week*, couldn't recall what he had been asked to consult on."

"While the conference supports many worthy projects, it is controlled not by survivors but by surrogates, and operates with limited oversight and financial accountability," wrote Thane Rosenbaum, a professor of law at Fordham University.

"They obviously decided that when it hit *The New York Times*, it was time to act," Dubbin said. "This decision just sharpens the focus on the continued expenditure for non-survivor needs and demands justification in light of the suffering those expenditures permit."

The 80-20 split has been the subject of debate even outside of the Claims Conference. In 2002, Israel Singer, then president of the Claims Conference, defended the allocation, telling the *Jewish Telegraphic Agency*, "The survivors are not the only heirs of Jewish property. They are the first beneficiaries, but not the only heirs. The Jewish way is to take care of those in need, but also to educate our children."

But as medical costs of survivors have increased as they aged — most are now about 80 — more and more people questioned the split. Just last year, Wolf Factor, chairman of the Foundation for the Benefit of Holocaust Victims in Israel, told JTA that Holocaust

commemoration and youth trips to Poland are not as immediately relevant as help for survivors.

He said he hoped that the Claims Conference and the State of Israel would "come to their senses and understand that honoring the memory of the Holocaust is not only to remember the dead, but essentially to remember the living who still need us."

The number of needy applicants approaching the foundation has increased by more than 60 percent since it was created in 1994. The foundation said that 40 percent of Israeli Holocaust survivors lived below or just barely above the poverty line. And it was reported that one-fourth of Israel's 280,000 survivors could not afford medications or the cost of a home health aide.

Just this week, the State of Israel announced that some 100,000 survivors would receive a \$285 increase in their monthly allowance. But no decision has yet been made about increased assistance for another 150,000 survivors in Israel who fled the Nazis by escaping to the Soviet Union.

Dubbin said that in 2004 there were a reported 175,000 survivors in the United States, at least 85,000 of whom were living at or below the poverty line or considered poor.

Berman, the Claims Conference board chairman, said \$18 million annually for education "is a good hunk of money" that would be sufficient to meet the "competing needs and priorities."

Since 2003, the Claims Conference's annual allocation had been \$90 million. It was increased this year to \$100 million and will jump to \$110 million next year, \$122 million in 2009 and \$135 million in 2010.

"The board usually makes its decisions year by year, but we decided that because of the [growing] needs we should tell social welfare agencies and the people that they will have more money," Berman said.

"The cost of living of a sick person is becoming astronomical," he added. "People are living longer and they are sicker and they need financial support in greater dimensions."

Menachem Rosensaft, founding chairman of the International Network of Children of Jewish Holocaust Survivors, called the Claims Conference's decision a "welcome step in the right direction."

"I've been aware that discussions were going on for years," he said. "The overriding mission of the Claims Conference is and must be to ensure that Holocaust survivors can live out their remaining years in dignity and with their basic needs met," he said. "Once that is accomplished, one can have a discussion as to how to apply remaining funds."

Asked if he supported allocations to educational projects, Rosensaft replied: "There are very legitimate Holocaust remembrance projects. Having said that, it is very clear that medical care and food for an elderly survivor trumps any cultural or educational project."

There are so many other organizations that also fund Holocaust education programs that funding from the Claims Conference is not necessary, maintains Leo Rechter, president of NAHOS (National Association of Jewish Child Holocaust Society).

He said he had just received the magazine of a major organization that is spending more than the Claims Conference on Holocaust education.

"We are very much in favor of educational efforts and we survivors go to classes and speak to high school and junior high school students" about the Holocaust, he said.

But Rechter maintained that some of the educational projects funded by the Claims Conference are nothing more than "pet projects" of board members who get them funded "for their own glorification."

He cited capital investments in St. Petersburg and Kishinev in Russia, cities in which "there were no survivors."

"St. Petersburg was not occupied by the Germans," Rechter said.

However, Eli Zborowski, another survivor and chairman of the American Society for Yad Vashem, said he supported the 80-20 mix because much of the money distributed by the Claims Conference comes from the sale of German Jewish property owned by Jews who had no heirs.

"Shouldn't part of the money go to remembering them?" he asked.

But David Mermelstein, president of the Miami Holocaust Survivors, said he believes the \$18 million annual education allocation should either be eliminated or cut in half to provide more money for needy survivors.

"The needs gets worse as we get older," he said. "Until now we didn't have to worry about wheelchairs. But today I helped a man get a wheelchair" who could not get to the synagogue without it.

"If they would only take a person who would go from state to state and visit some of the cities and see the need of the survivors, they would understand better," he said. "We tell them, but it is not the same as being there."

Asked what could be done if all \$18 million were allocated for the care of survivors, Mermelstein replied: "Just give us \$1 million and we could add to the hours of homecare" and other services.

Mr. COHEN. So I thank everyone for their time and patience and wish everybody, again, a Happy New Year. Hope you didn't have to atone too much and you just continue on in the right path to have a short atonement next year.

This hearing of this Subcommittee on Commercial and Administrative Law is adjourned.

[Whereupon, at 1:40 p.m., the Subcommittee was adjourned.]



## APPENDIX

## MATERIAL SUBMITTED FOR THE HEARING RECORD

## LETTER FROM THE HOLOCAUST SURVIVORS' FOUNDATION—USA



Holocaust Survivors' Foundation - USA

Member Organizations  
(Partial List)

September 21, 2010

Amer. Assn. of Jewish Holocaust  
Survivors of Greater BostonAssn. of Holocaust Survivors from  
Former USSR, Los Angeles

U.A.N.D.L.E.S., Terre Haute, IN

Child Survivors of Arizona

Child Survivors/Hidden Children of  
The HolocaustCoalition of Holocaust Survivor  
Clubs in South FloridaCouncil of Nazi Holocaust Survivor  
Organizations of So. California

Habonim Cultural Club, Miami

Holocaust Child Survivors &  
Friends of Greater HartfordHolocaust Survivors Club of  
Roca, RatonHolocaust Survivors of  
Greater DetroitHolocaust Survivors of  
Greater PittsburghHolocaust Survivors of  
South FloridaHolocaust Survivors Group of  
Southern NevadaHouston Council of  
Jewish Holocaust SurvivorsThe Jewish Holocaust Survivors &  
Friends of Greater WashingtonJewish Survivors of Latvia, Inc.  
New YorkNational Assn. of Jewish Child  
Holocaust Survivors, Inc.New American Jewish Social Club,  
MiamiNew Crowsow Friendship Society,  
New York

Survivors of Atlantic City, NJ

Survivors of the Holocaust Asset  
Recovery Project, SeattleSurvivors of the Holocaust of  
New MexicoTikvah Achary Heshoeh,  
San Francisco

The Honorable John Conyers  
United States House of Representatives  
Chairman, Committee on the Judiciary  
Washington, D.C. 20510

The Honorable Steven Cohen  
United States House of Representatives  
Chairman, Judiciary Committee Subcommittee on  
Commercial and Administrative Law  
Washington, D.C., 20510

Subject: HR 4596 -- the Holocaust Insurance Accountability Act of 2010.

Dear Chairman Conyers and Chairman Cohen:

We are Holocaust survivors, and members of the executive committee of the Holocaust Survivors Foundation, USA, which includes elected leaders of groups throughout the country representing thousands of survivors. We came together nearly a decade ago because we were alarmed about the growing poverty and deprivation among our fellow survivors that was being ignored by the national political and communal leadership, and about the failure of the "restitution" establishment to deliver anything close to the promised "measure of justice."

We are writing today to thank you for co-sponsoring the Holocaust Insurance Accountability Act of 2010, HR 4596, and for holding the hearing on Wednesday September 22. This hearing is an important opportunity for Congress to have a full and honest airing of the problems that we survivors and our families have faced in attempting to locate and collect our insurance policies, and to reconnect with our families' histories. We are taking the liberty of distributing this letter to your colleagues on the Committee.

This measure may be our last hope to require insurance companies doing business in the United States to honor policies they marketed to our parents and grandparents prior to WWII, but failed to pay after the Holocaust. Certainly, for many among us, they will not be here next year if this effort fails.

These companies had the audacity to demand death certificates after the war that Hitler never gave and original policies that no survivor could possibly have after Auschwitz. HR 4596 would, at long last, invoke Congress's proper authority to restore our rights -- outrageously denied by executive branch machinations and court cases -- and validate state laws requiring insurers to publish the names of pre-war policy holders, and allowing survivors, heirs, and beneficiaries to bring lawsuits against companies who refuse to settle on reasonable terms.

*"JUSTICE AND DIGNITY FOR SURVIVORS"*



## Holocaust Survivors' Foundation - USA

### Member Organizations (Partial List)

Amer. Assn. of Jewish Holocaust Survivors of Greater Boston  
 Assn. of Holocaust Survivors from Former USSR, Los Angeles  
 C.A.N.D.L.E.S., Torro Hauto, IN  
 Child Survivors of Arizona  
 Child Survivors/Hidden Children of The Holocaust  
 Coalition of Holocaust Survivor Clubs in South Florida  
 Council of Nazi Holocaust Survivor Organizations of So. California  
 Habonim Cultural Club, Miami  
 Holocaust Child Survivors & Friends of Greater Hartford  
 Holocaust Survivors Club of Boca Raton  
 Holocaust Survivors of Greater Detroit  
 Holocaust Survivors of Greater Pittsburgh  
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 Holocaust Survivors Group of Southern Nevada  
 Houston Council of Jewish Holocaust Survivors  
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 Jewish Survivors of Latvia, Inc. New York  
 National Assn. of Jewish Child Holocaust Survivors, Inc.  
 New American Jewish Social Club, Miami  
 New Cronow Friendship Society, New York  
 Survivors of Atlantic City, NJ  
 Survivors of the Holocaust Asset Recovery Project, Seattle  
 Survivors of the Holocaust of New Mexico  
 Tikvah Achray Hashash, San Francisco

September 21, 2010  
 Page 2

Survivors are distressed by the U.S. government's actions that have allowed global insurance companies to pocket billions of dollars from insurance policies that our beloved parents and grandparents paid for, but were never honored. ICHEIC failed to address the rights of 97% of the universe of account holders. Conservative estimates show that the value of insurance policies to Jews in Europe prior to WWII that have not been paid exceeds \$20 billion in today's value. Court decisions giving insurers more than they bargained for from President Clinton have wrongly deprived survivors and heirs of our legal rights.

It is unthinkable after all we endured that we are now second class citizens in the United States legal system.

The State Department's role in defending insurers and participants on the International Commission for Holocaust Insurance Claims (ICHEIC) against Holocaust survivors and heirs has been very troubling. The Department has exaggerated ICHEIC's achievements and misrepresented the scope of the U.S. government's commitments to foreign countries and companies in order to thwart survivors' and Congressional efforts.

Recently, documents we obtained through the Freedom of Information Act show that the Department of Justice under two Administrations has also distorted U.S. policy in the service of insurance companies' interests.

Most members of Congress may not be aware that in the United States today, tens of thousands of Holocaust survivors cannot afford adequate food, medicine, shelter, home care, dental care, or other basic needs. According to data collected by Professor Ira Sheskin of the Miller Center at the University of Miami, the leading Jewish demographer in the U.S., in 2004, over 40,000 survivors in America lived at or below the official poverty level, and another 40,000 had incomes so low they are considered poor. Those numbers are likely somewhat smaller today, but the number of desperately poor survivors in the U.S. today numbers in the tens of thousands.

You will undoubtedly hear from the insurance industry and their allies that it is time to move on, that there are not that many unpaid policies. If there is no great exposure, then why have these global insurers spent millions of dollars lobbying Congress over the past three years? They are simply trying to perpetuate their massive theft of our families' money. And, they are trying to sweep their corrupt histories under the rug without a full accounting of their conduct. You must not let them succeed.

"JUSTICE AND DIGNITY FOR SURVIVORS"



## Holocaust Survivors' Foundation - USA

September 21, 2010

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Tikvah Acharay Hashoah, San Francisco

You will also hear that passage of legislation to restore survivors' rights might endanger funds from Germany which help provide for some of the services needed by survivors today. This is also a false argument, one which even the German government has repeatedly denied. Why do the insurers have to resort to these cheap scare tactics when all we are asking for is the restoration of our basic rights?

Finally, we learned that certain non-survivor Jewish NGOs are circulating their "arguments" against HR 4596. We find it disgraceful for Jewish groups to oppose our interests. It is beyond the cynical for groups who have absolutely no right to speak about our legal rights to give the false impression, because of their good names, that they have any role in the debate over this legislation. This is about our legal and moral rights, period. Moreover, their financial dealings with the culpable insurers make their opposition to our rights an utter disgrace, such as ADL's questionable connections with Generali.

We are attaching our letter to the Senate Foreign Relations Committee from 2008, which is still relevant. However, we would add to the list of conflicts of interest that in the past year, the American Jewish Committee has entered into a "partnership" with Allianz whereby the insurance giant funds trips by young professionals to Germany. This is the height of hypocrisy – and we would appreciate it if you ask AJC how it can morally reconcile accepting money from Allianz today when the company failed to honor billions in policies sold to Jewish Holocaust victims.

In this regard, we are also attaching the list of bona fide Holocaust survivor groups and organizations of the second generation – children of survivors – who support HR 4596 and wish to see Congress restore our and our families' legal rights. This measure enjoys the overwhelming support of the survivor community.

We regret that it was not possible to have survivors testify at the hearing, especially because some among us were invited but due to health concerns could not travel to Washington. It is a shame that, with such profound moral principles at stake, no actual survivor with an insurance claim will be able to address this historic hearing. However, we have asked Sam Dubbin, our long-time counsel, to do his best to represent our point of view, and he is someone we have counted on for over a decade. We should add here that he has our full confidence, as well as our gratitude for his years and years of selfless work on behalf of Holocaust survivors and our families.

**"JUSTICE AND DIGNITY FOR SURVIVORS"**

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# Holocaust Survivors' Foundation - USA

September 21, 2010  
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New Czecho Friendship Society, New York  
Survivors of Atlantic City, NJ  
Survivors of the Holocaust Asset Recovery Project, Seattle  
Survivors of the Holocaust of New Mexico  
Tikvah Achary Hashosh, San Francisco

This is our final request. Even though we will not physically be present at the hearing on Wednesday, this entire discussion should revolve around us and only us. The collateral and diplomatic obfuscations we have had to endure in obtaining what is rightfully ours must stop. This is about one issue and one issue only – are Holocaust survivors, and the children and grandchildren of Holocaust victims – equal citizens under U.S. law? We think the answer is obvious, and urge you to pass HR 4596 without any further delay.

We look forward to a positive report on the hearing, and more importantly, a mark-up to follow immediately. Time is not on our side, and we are depending on you.

Respectfully,

David Schuster  
President

## JOINED BY HSF EXECUTIVE COMMITTEE:

Israel Arbeiter, Boston MA  
Sello Fisch, Bronx NY  
Nesse Godin, Washington D.C.  
Louise Lawrence-Israels, Washington D.C.  
Herbert Karliner, Miami Beach, FL  
David Mermelstein, Miami FL  
Alex Moskovic, Hobe Sound, FL  
Leo Rechter, Queens NY  
Jack Rubin, Boynton Beach, FL  
Henry and Anita Schuster, Las Vegas NV  
Ivar Segalowitz, Great Neck, NY  
Fred Taucher, Seattle WA  
Esther Widman, Brooklyn NY

*"JUSTICE AND DIGNITY FOR SURVIVORS"*

**Groups Supporting HR 4596 – The Holocaust Insurance Accountability Act of 2010**

Holocaust Survivors Foundation, USA, Inc.  
 National Association of Jewish Holocaust Survivors (NAHOS)  
 Child Survivors/Hidden Children of the Holocaust  
 Southern California Council for Soviet Jews  
 The Shaarit Haplaytah – Holocaust Survivors of Greater Detroit  
 Florida Holocaust Survivors Coalition  
 Holocaust Survivors of Greater Boston  
 Holocaust Survivors of Greater Miami  
 Holocaust Survivors of Southern Nevada  
 Survivors of the Holocaust Asset Recovery Project, Washington State  
 The Jewish Holocaust Survivors & Friends of Greater Washington (D.C.)  
 Habonim Cultural Club, Miami  
 Holocaust Survivors Club of Boca Raton  
 The New American Social Club  
 Holocaust Council, United Jewish Communities (UJC) of Metro West, New Jersey  
 Houston Council of Jewish Holocaust Survivors  
 Generations of the Shoah International  
 Second Generation Holocaust Survivor Association of Silicon Valley, CA  
 Second Generation Los Angeles  
 The Generation After in the Washington, DC area (VA & MD)  
 CHAIM (Children of Holocaust Survivors Assoc. in Minnesota)  
 CHAIM (Children of Holocaust-Survivors Assoc. In Michigan)  
 Generation After Milwaukee, WI  
 Generations of the Shoah-New Jersey  
 Holocaust Remembrance Committee, Baltimore, MD  
 Holocaust Resource Center-Temple Judea, Manhasset, NY  
 Holocaust Council of MetroWest, UJCNU, New Jersey

Generations After at the Florida Holocaust Museum, St. Petersburg, FL

Second Generation of Jewish Holocaust Survivors in Houston

Phoenix Holocaust Survivors' Association

St. Louis Descendants of Holocaust Survivors and Victims

3G NY (New York Group of grandchildren of survivors)

New York Legal Assistance Group (Legal Aid Group)

The Blue Card, Inc. (New York City Holocaust survivor social service delivery group)

Jewish Community Relations Council of Boca Raton

Jewish Community Relations Council of Minneapolis-St. Paul



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C.A.N.D.L.E.S., Terre Haute, IN

Child Survivors of Arizona

Child Survivors/Hidden Children of  
The Holocaust

Coalition of Holocaust Survivor  
Clubs in South Florida

Council of Non Holocaust Survivor  
Organizations of So. California

Israhoni Cultural Club, Miami

Holocaust Child Survivors &  
Friends of Greater Hartford

Holocaust Survivors Club of  
Boca Raton

Holocaust Survivors of  
Greater Detroit

Holocaust Survivors of  
Greater Pittsburgh

Holocaust Survivors of  
South Florida

Holocaust Survivors Group of  
Southern Nevada

Freedom Council of  
Jewish Holocaust Survivors

The Jewish Holocaust Survivors &  
Friends of Greater Washington

Jewish Survivors of Latvia, Inc.  
New York

National Assn. of Jewish Child  
Holocaust Survivors, Inc.

New American Jewish Social Club,  
Miami

New Czecho Friendship Society,  
New York

Survivors of Atlantic City, NJ

Survivors of the Holocaust Asset  
Recovery Project, Seattle

Survivors of the Holocaust of  
New Mexico

Tikvah Academy Holocaust,  
San Francisco

May 8, 2008

The Honorable Bill Nelson  
United States Senator  
716 Hart Senate Office Building  
Washington, D.C. 20510

Re: **Submission for Official Record of Senate Foreign  
Relations Committee Hearing of May 6, 2008**

Dear Senator Nelson and Other Members of the Committee:

We are Holocaust survivors, and members of the executive committee of the Holocaust Survivors Foundation, USA, which includes elected leaders of groups throughout the country representing thousands of survivors. We came together nearly a decade ago because we were alarmed about the growing poverty and deprivation among our fellow survivors that was being ignored by the Jewish leadership, and about the failure of the "restitution" establishment to deliver anything close to the promised "measure of justice." In our view, the restitution enterprise of the last decade has allowed multinational corporations to keep billions in unjust enrichment without demanding sufficient funds to provide all survivors with dignity in their last years.

Thankfully, the House of Representatives is addressing one such area with legislation to require global insurers to account for policies they sold our parents and grandparents before the Holocaust. These companies had the audacity to demand death certificates after the war that Hitler never gave and original policies that no survivor could possibly have after Auschwitz. HR 1746 would require such insurers now doing business in the United States to publish the names of pre-war policy holders, and allow survivors, heirs, and beneficiaries to bring lawsuits against companies who refuse to settle on reasonable terms. We are asking the Senate to do the same, Mr. Chairman and members of the Committee.

In the late 1990s several states passed laws to hold these insurers accountable, but they have been nullified by court cases giving companies immunity under the "International Commission on Holocaust Era Insurance Claims", or "ICHEIC." Companies were supposed to open their files and pay claims under relaxed standards of proof, but those goals were not met. When it closed, ICHEIC paid less than three percent (3%) of the total amount owed, leaving \$17 billion in 2007 dollars unpaid.

The current bill would restore survivors' rights against the insurers. It is opposed by the insurance industry, the German Government, the U.S. State Department, and certain Jewish groups affiliated with ICHEIC. Germany, and hence the opponents, argue that the insurers were promised "legal peace" in previous deals, and that if the bill passes, Germany will no longer deign to give survivors the token payments negotiated periodically by the Claims Conference.

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## Holocaust Survivors' Foundation - USA

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 Tikvah Achshav Hashoah, San Francisco

The *deal* cited is the German-U.S. Executive Agreement where Germany demanded that insurance be included in a global "settlement" before it would pay about \$1 billion to Jewish slave laborers and \$3 billion to non-Jewish forced laborers. This was bad enough because survivors never agreed that our insurance rights could be limited in exchange for German manufacturers doing what they should have done decades ago -- i.e. compensate human beings who were forced into slave and forced labor in WWII. One thing has nothing to do with the other. But even in the *deal*, the U.S. never agreed to give insurance companies the immunity they now demand. And though courts have given the insurers greater protection than they bargained for, Congress has the authority to, and should, restore survivors' rights.

Congressman Tom Lantos, a great champion of human rights and especially survivors' rights, who, sadly, passed away last month, courageously resisted Germany's threats and, with ranking member Ileana Ros-Lehtinen, led HR 1746 to unanimous passage through the Foreign Affairs Committee a few months ago.

At the Financial Services Committee hearing in February, opponents hatched their surprise weapon -- letters from the World Jewish Congress, the Anti-Defamation League, the American Jewish Committee, and B'nai B'rith opposing HR 1746. The groups repeated this gambit at the Senate Foreign Relations Committee hearing on May 6, joined by the Religious Action Center for Reform Judaism and Agudath Yisroel.

The survivors present at the hearings were appalled at the disrespect shown by Jewish groups we have supported for decades. Their organizational forbearers were largely silent during the darkest days of history, when they could have saved millions of human lives by speaking out. How dare they use those voices today to defeat the interests of living Holocaust survivors who only want the right to speak and act for ourselves? As Congressman Wexler said: "I don't know how these American Jewish leaders can sleep at night." Chairman Frank also strongly defended the right of every survivor to decide for him or herself what is acceptable when it comes to reconciling with those who wronged us.

It is no secret that the groups are doing the bidding of the Claims Conference, who participated in ICHEIC and had much to do with its decisions. Chairman Julius Berman has told survivors that the Conference is opposing the bill to protect its "credibility" as the negotiator over survivors' rights, and its leaders, previously working behind the scenes, are now operating in the open to scuttle the legislation. But why are these other groups lending their good names to protect insurance companies and Germany and undermine Holocaust survivors' rights?

The ADL and B'nai B'rith have received hundreds of thousands of dollars over the years from the Claims Conference. The AJC is a Claims Conference board member and participated in ICHEIC, and has a vested interest in the appearance that the process was a success. The WJC is also a Claims Conference board member and was a key ICHEIC player, led by its recently dismissed former Chairman Israel Singer. The Reform Movement and Agudath Yisroel are also Claims Conference Board members and some of their institutions have received grants over the years as well. All of these groups refuse to challenge the Claims Conference policy of using millions of precious restitution funds for research, education, and documentation projects including millions in grants to board members, despite the fact that tens of thousands in the U.S. and worldwide cannot afford a decent quality of life.

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 Tikkvah Achavim Heshoval, San Francisco

There are other conflicts as well. ADL received \$100,000 from one of the most culpable insurers, Generali, around the time Abe Foxman wrote an op-ed urging restraint in the pursuit of property claims such as insurance. The ADL letterhead brandished by Foxman bears the name of Kenneth Bialkin, who has led Generali's legal fight against survivors seeking their families' insurance policies. ADL's former lobbyist Harry Wall is now Generali's lobbyist. So, who is ADL speaking for when it opposes HR 1746?

It is depressing enough that these groups have no shame in presuming to have a relevant opinion when it comes to survivors' rights. Let me be clear -- this is none of their business. Having built huge organizations by invoking the horrors of the Holocaust to raise money and engender sympathy for their "human rights" programs, the groups have now abused their sacred obligations to those of us who endured the ultimate horror.

Worst still is that the ADL, the AJC, WJC, B'nai B'rith, and the others have been silent all these years in the face of grinding poverty among the dwindling family of Holocaust survivors among us. They have ignored what my colleagues and I cannot ignore -- over 80,000 survivors in the United States who live at or below the poverty line, or who are so poor they cannot afford adequate food, medicine, home care, dentures, eyeglasses, shelter, and other necessities. The unique hardships suffered during the Holocaust make for even more tragic health and emotional problems for all survivors, but are especially cruel for the poor among us.

During the past decade of "restitution," we survivors have been alone without the backing of any of the so-called leaders of the Jewish community, including the Federation and UJC leadership. Even Elie Wiesel has been absent and his voice surely would have helped to stop this suffering among survivors who are living in poverty. We know he is aware of the unabated suffering. Their silence has been the most devastating blow to us in our search for righteousness and dignity for our fellow survivors.

The tens of thousands of poor survivors throughout the world are witnesses to the failure of the entire restitution enterprise which these groups have now embraced. It is time for an honest accounting of the current debt owed by all to the living victims of history's greatest crime.

Senator Nelson, the Floridians signing this letter know you personally and we trust in what you told us when we sat with you after the House of Representatives Financial Services Committee hearing in February -- that you are behind us, and that you support legislation restoring the right to go to court for survivors and heirs, and requiring the publication of names. We also know you were one of the first public officials anywhere who took the time to listen to our concerns about the devastating effects of poverty on those among us who are in need, and you were willing to work with us to do the right thing.

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However, survivors throughout the United States are frustrated that non-survivor organizations we never chose and others are so presumptuous as to interfere with our individual rights as Americans. We are also perplexed at the possibility that any elected official, much less a member of the United States Senate, might confuse the interests of such organizations with the rights of those of us who personally lost everything and now seek only the truth and fairness to us as individuals.

Up until now, the real survivors' voices have been drowned out by these organizations and thousands have suffered as a result – and it is hard to imagine but deaths are accelerating among those not receiving the help they desperately need. It is not too late for you and your colleagues in Congress to take the actions necessary to provide survivors what they need and deserve.

We appreciate your placing this letter in the official record of the Senate Foreign Relations Committee hearing of May 6, 2008 for the benefit of your colleagues and the public. We hope you and your colleagues move swiftly to enact HR 1746.

Respectfully,

David Schaefer, President

### Executive Committee:

Israel Arbelter, Boston MA  
 Nesse Godin, Washington DC  
 David Mermelstein, Miami FL  
 Alex Moskovic, Hobe Sound FL  
 Leo Rechter, Queens NY  
 Jack Rubin, Boynton Beach FL  
 Henry and Anita Schuster, Las Vegas NV  
 Fred Taucher, Seattle WA  
 Lea Weems, Houston TX  
 Esther Widman, Brooklyn NY

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**Property Battle, Shunning Anti Defamation League Receives \$100,000 from Generali**

The contribution arrived at full heat of the dispute over the Holocaust victims' policies.

**Itamar Levin** 24/01/1998 17:44:14

The Anti Defamation League last year received a contribution of \$100,000 from insurance company Generali, which, for over a year, has been in the midst of a long drawn out confrontation concerning the policies of Holocaust victims. "Globes" learned that the organisation consented to accept the contribution, despite its reservations as to the manner in which the Holocaust victims' property issue is being handled.

The Anti Defamation League is headed by Abraham Foxman, a Holocaust survivor. In recent months, Foxman has publicly asserted that "this type of argument will distort the Holocaust". In an article in the "M'ariv" newspaper last month, Foxman expressed his misgivings that "the final impression made by this century will be that the Jews died, not because they were Jews, but because they had bank accounts, gold, art works and property... That is too high a price for the justice we will never be able to obtain".

The organisation had previously expressed its opposition to the imposition of sanctions on the Swiss banks, although it criticised them during the deposits crisis. Last August, the organisation praised Generali for agreeing to pay \$100 million in the policies affair, but refrained from expressing an opinion when the agreement ran aground a few weeks later.

The Anti Defamation League, founded in 1913, acts to protect Jewish rights world-wide. It gained prominence mainly for its fight against anti-Semitic manifestations, against Holocaust denial and against terrorism. It has \$50 million annual budget, so that the Generali contribution is not significant for it in budgetary terms, but may prove meaningful in terms of Generali's image.

Generali set up a \$12 million fund for ex gratia payments to the heirs of insured parties, aid to needy Holocaust victims, and to organisations engaged in the research and commemoration of the Holocaust. It was only in recent days that the fund started examining applications from such organisations, and it is thus obvious that the contribution to the Anti Defamation League was not part of the fund.

The League's Jerusalem office confirmed that the organisation received a \$100,000 contribution last year from Generali. It said the moneys are designated for projects relating to efforts by Italians to rescue Jews during the Holocaust, as part of the League's activity in that context. The organisation said it had no problem with accepting the contribution in general or receiving it under present circumstances in particular.

*Published by Israel's Business Arena January 21, 1999*



The Honorable Barney Frank  
Chairman, Committee on Financial Services  
US House of Representatives  
2252 Rayburn House Office Building  
Washington, DC 20515-2104


We are writing to express the view that House Resolution 1746, the Holocaust Insurance Claims Accountability Act, is not necessary and undermines the credibility of efforts by the U.S. government, and many non-government organizations to resolve these problems.

In addition to all the claims that have already been recognized and for which monies have been dispersed, the ICEHC also has made clear that its "member companies intend to continue to address inquiries that are sent to a specific company and will honor legitimate claims." Such cases, which we understand to date are few in number, are and will be handled in a serious fashion.

It is therefore our belief that the agreements which were comprehensive in nature and which were supported by many of the most outspoken institutions on behalf of Holocaust survivors, including State Insurance Commissioners, members of the Administration, and major Jewish organizations, should be respected and continue to be the foundation for resolving any future claims.

HR 1746, as we noted, is unnecessary and does not serve the needs of Holocaust survivors nor the interest of the credibility of agreements on these matters of great sensitivity.

Sincerely,



Abraham H. Foxman  
National Director



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No. 407 | June 23, 2010

## WHAT WE'RE SAYING

[AJC Praises New EU Sanctions Against Iran](#)[AJC Urges Removal of UN Rapporteur Richard Falk](#)

## OPINION &amp; ANALYSIS

[David Harris Blog on Huffington Post: Spain's Pro-Israel Tag Team](#)[Kenneth Bandler on FOXNews.com: Why Isn't Anyone Pointing Fingers at Hamas?](#)[David Harris Op-Ed in JHT: Secrets of a Disappointed Life](#)[Ben Cohen on Huffington Post: The Hazbottilla](#)[AJC Op-Ed in the Daily Pilot: MSI's Suspension Warranted](#)

## OUTREACH

President Obama re-appointed Felipe Gaer, Director of AJC's Jacob Blaustein Institute for the Advancement of Human Rights, to the United States Commission for International Religious Freedom. Gaer has served on the commission since 2001... AJC's Women's Campaign hosted a sold-out conversation with Ayaan Hirsi Ali, author of *Nomad*... A group of young U.S. Jews are visiting Germany on a joint AJC-Allianz program, sponsored by the German insurance giant.

## IN THE MEDIA

*The Jerusalem Post* quoted David Harris on the resignation of Israel's Ambassador to the U.N. Gabriela Shalev... Harris' op-ed, "Spain's Pro-Israel Tag Team" was also picked up by the *Latin American Herald Tribune*... Harris' previous op-eds were also picked up and published in *J Weekly*, the Jewish Weekly of Northern California and in Uruguay's leading paper, *La*

## FEATURED AUDIO

[AJC Radio Message: Gilad Shalit Held 4 Years Too Long](#)

## IN THE MEDIA (cont.)

*JTA* quoted Jason Isaacson, AJC Director of Government and International Affairs, about U.S. - Turkish relations... Director of Russian Jewish Community Affairs Sam Kliger quoted in *New York Jewish Week* about ties between Bukharan Jews and Muslims in Queens, New York... *Haaretz* quoted Alex Weininger, AJC Public Relations Associate, on AJC's decision to meet with Turkish officials in Washington... Boston's Regional Office Director Rob Leikind was cited by the *Associated Press* regarding a Massachusetts ballot initiative focusing on Israel's marriage and immigration laws... Director of Communications for AJC's Los Angeles Regional Office Eli Lipman contributed to an op-ed in the *LA Jewish Journal* on the importance of a viable transportation system in LA to becoming energy independent... *New York Jewish Week* profiled two ACCESS leaders in a piece about emerging Jewish leaders called "36



**June 19-27, 2010**

AJC and Allianz SE, Germany's largest insurance company and a charter member of the German Foundation Initiative, are joining together in a 5-year groundbreaking cooperation to bring young American Jewish professionals in cooperation with Germany Close Up to Germany for high level discussions with government representatives, business leaders, scholars, and leaders of the German Jewish community and intensive interaction with peers working at Allianz.

Join us for this unique 8-day experience which will focus on the German past and present and challenges and opportunities in the German-Jewish relationship today and in the future. Participants will be encouraged to become active participants in the ongoing German-Jewish relationship.

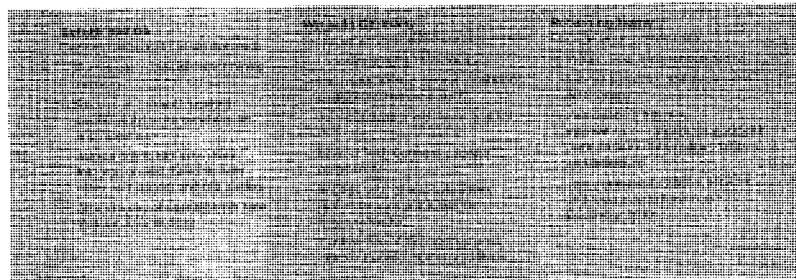
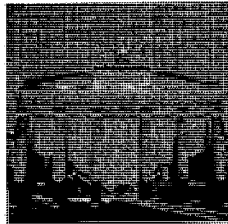
**Cost:** \$400 (includes international travel, hotel, and most meals on the ground in Germany)

**Eligibility:** Must live in NY or DC metro areas and must be between 22 and 35

**Application:** available at [www.ajc.org/access](http://www.ajc.org/access)

**Deadline:** March 1, 2010

For more information and application: [global@ajc.org](mailto:global@ajc.org)



**Allianz**  **AJC**  
ACCESS

in affiliation with

Germany Close Up  
International Jewish Leadership Center

**The New York Times**  
nytimes.com

September 13, 2008

## **Allianz Drops Bid for Naming Rights**

By **RICHARD SANDOMIR**

The Giants and the Jets said Friday that they had ended talks with Allianz, a German-based insurance company with connections to the Third Reich, about selling the naming rights to the \$1.6 billion stadium they are building in the Meadowlands.

The decision came after two days of largely negative reaction to the possibility of a deal with Allianz, which insured facilities at Auschwitz and other concentration camps, and which deprived many Jewish customers of the proceeds from their insurance policies.

The New York Times first reported about the talks between Allianz and the teams on Sept. 1 and provided details of the company's history Wednesday. Mark Lamping, the president of the teams' joint venture, New Meadowlands Stadium, informed Allianz on Friday morning that the discussions were over.

Lamping said in an interview: "We paid very close attention to what people were saying this week. Whether those opinions were expressed directly to us, or through the media, we paid attention and was one of many factors that went into our decision."

But he would not say why the teams entered into negotiations with Allianz knowing of its Nazi-era dealings and the potential that people in the New York market, which includes many Jews and Holocaust survivors, might be offended.

"We gained a real understanding of the depth of the issues in the community," he said.

Lamping and Sabia Schwarzer, an Allianz spokeswoman, stressed that there had never been a final deal for Allianz to pay \$25 million a year for the naming rights.

In fact, Schwarzer said, Allianz's board decided Tuesday that it was "too early to decide on such a big financial commitment, that it was too large and it wanted more time to consider it."

She said she had been told that the board's tentative judgment, after more than a month of talks, was conveyed Wednesday to the Tisch family. She did not say which of the Tisches, who own half of the Giants, received the call. Lamping said he had not been told of Allianz's decision.

Schwarzer played down the impact of the criticism of the potential deal, saying the criticism had not yet begun when the Allianz board expressed its need to spend more time evaluating the financial commitment.

She said that the company and the teams expected some of the anti-Allianz reaction, if not the volume, which included a cartoon in The Daily News that depicted a football stadium with a swastika on it.

"The families had done a thorough due diligence," she said, referring to the teams' owners. "We knew it was a concern for them, knowing what Allianz had done in the past. The families said, 'You're a German company, so let's talk about World War II.' It's not like we didn't have a clue. But it's regrettable that it happened this way."

Schwarzer's version of events differs from that of an executive working for the teams who was briefed on conversations between an Allianz board member and the teams' owners. That executive, who was not authorized to speak publicly about the conversations, said that on Wednesday the board member, Joachim Faber, called Steve Tisch, the chairman of the Giants; John Mara, the Giants' president and co-owner; and Woody Johnson, the Jets' owner, to convey his optimism that a deal would be completed.



So if Allianz's enthusiasm — if not a signed deal — was known to the teams, was the public reaction to its connections to the Nazis the final blow to the discussions?

"We didn't isolate it that way," Lamping said. "We looked at the collection of all the factors, including assessing where we were in the negotiations."

There is no deadline for signing a naming-rights deal for the stadium, which is scheduled to open in 2010.

The reaction to Allianz's talks with the teams reflects the continuing debate about whether the German government and German companies have given victims of the Holocaust and their families adequate apologies and restitution.

"Allianz has gone a long way to atone, and one can forgive, but one cannot forget," said Abraham H. Foxman, the national director of the Anti-Defamation League. He said the teams' decision to end the talks with Allianz "indicates they are listening to their neighborhood, to their families, to the families of World War II survivors."



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PREPARED STATEMENT OF ALBERTO GOETZL

Statement for the Hearing Record

Submitted by:

Alberto Goetzl

Adamstown, Maryland

on

H.R. 4596: "Holocaust Insurance Accountability Act of 2010"

Committee on the Judiciary

Subcommittee on Commercial and Administrative Law

September 22, 2010

My name is Alberto Goetzl. I reside at 2101 Park Mills Road in Adamstown, Maryland. My grandparents (my father's parents) were deported from Trieste, Italy in November of 1943 and killed in the gas chambers of Auschwitz. My parents were more fortunate. They immigrated to the United States in 1939 and lived the balance of their lives as naturalized American citizens, enjoying the freedoms and legal protections that our country offers. During their lifetimes, they exalted in everything that America is about and contributed in kind to this country that gave them, and their children, refuge and hope.

My family's case might be illustrative of some of the problems having to do with holocaust-era insurance claims. My grandfather was a member of the Jewish community in Trieste, Italy before he was deported with my grandmother to Auschwitz and killed in 1943. Apparently, Assicurazioni Generali sold my grandfather an insurance policy in 1927 with a face value of \$6,500 U.S. Dollars, a record of which exists in Generali's files as Policy No. 57.551. We learned about this policy because, in 1996-1998, Generali posted ads soliciting names of survivors and family members to check against information about possible company policies. Generali produced a mostly illegible copy of my grandfather's policy in 1998, but also indicated that the policy "was surrendered before 1936." When requested to provide additional details and information about the circumstances surrounding the surrender of the policy, Generali refused to provide us with any further information, citing European privacy laws. That seemingly was the end of it. Unfortunately, we (the family) had no other means of obtaining more information.

We were also informed by those familiar with the ICHEIC process that Generali would not honor policies that they concluded were "surrendered" before 1936 even though they would not provide supporting documentation for that determination. I even contacted Robert Swift, the lawyer who settled the class action lawsuit with Generali, to get a sense of what we might expect if we joined the settlement. Based on that conversation and our correspondence with Generali, we determined that the outcome would likely have been unsatisfactory and would not have resulted in any further information about my grandfather's policy.

Almost certainly, if H.R. 4596 became law, and if my family elected to go to court, Generali would be forced to be more forthcoming with information that they possess about my grandfather's policy. If it were shown in a court of law that the policy may not have expired or was cancelled for illegitimate reasons, the insurance company would certainly have an obligation to make good on its insurance contract. Absent passage of H.R. 4596, pursuing this matter is not even an option that we might consider.

While H.R. 4596 might affect my family directly, much more importantly, it corrects a fundamental injustice that is contrary to basic American ideals – the freedom to pursue due process to redress wrongs. This bill would enable American citizens who believe that they have a legitimate claim against an insurance company for insurance policies issued in Europe prior to and during World War II to seek redress in a court of law without federal government interference on the basis of agreements reached by the Executive Branch. Such a right, guaranteed by the Constitution, is currently being denied. As complicated as holocaust-era insurance claims may be, this is a simple concept. A citizen's right to file suit against an insurance company to retrieve information about or to honor an insurance policy should not be denied.

Frankly, the argument that H.R. 4596 would somehow upset the apple cart of “legal peace” guaranteed to the insurance companies is not very compelling. They were complicit -- willingly or unwillingly -- during the Holocaust; they did not and apparently continue to not honor holocaust-era insurance claims. It’s fundamentally contrary to American ideals that citizens are denied the right to pursue this type of grievance in a court of law if they choose to do so. I urge the Subcommittee to recommend consideration by the full Committee and House of H.R. 4596.

Alberto Goetzl

Adamstown, MD

September 24, 2010

